CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 945

JOHN P. McWILLIAMS, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 946

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, EXECUTOR, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 947

BROOKS B. McWILLIAMS, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 24, 1947.

CERTIORARI GRANTED MARCH 3, 1947.

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UNITED STATES CIRCUIT COURT OF APPEALS

For the Sixth Circuit.

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THE TAX COURT OF THE UNITED STATES

Docket No. 5945

JOHN P. McWILLIAMS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES:

For Taxpayer:
John A. Hadden, Esq.

For Commissioner:
Lawrence R. Bloomenthal, Esq.

DOCKET ENTRIES

1944

Sept. 1—Petition received and filed. Taxpayer notified. Fee paid.

Sept. 4—Copy of petition served on General Counsel.

Oct. 2—Answer filed by General Counsel.

Oct. 2—Request for hearing in Cleveland, Ohio, filed by General Counsel.

Oct. 7—Notice issued placing proceeding on Cleveland, Ohio calendar. Service of answer and request made.

1945

Feb. 20—Hearing set April 16, 1945, Cleveland, Ohio.

Apr. 19—Hearing had before Judge Smith on merits, counsel to consolidate. Stipulation of facts filed at hearing. Briefs due 7-2-45; replies 7-20-45.

May 3—Transcript of hearing 7-19-45 filed.

1945

June 29—Brief filed by taxpayer.

July 5—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 7-5-45 Granted and served 7-6-45.

July 6—Copy of brief served on General Counsel.

July 20—Reply brief filed by taxpayer. 7-2-45 Copy served on General Counsel.

Aug. 20—Opinion rendered, Judge Smith, Decision of no deficiency will be entered. Copy served.

Aug. 20—Decision entered, Judge Smith, Div. 5.

Nov. 16—Petition for Review by U. S. Circuit Court of Appeals for the Sixth Circuit filed by General Counsel.

Nov. 19—Notice of filing petition for review sent to John A. Hadden filed.

Nov. 26—Proof of service of petition for review filed.

Dec. 11—Motion for extension to 2-14-46 to prepare and transmit the record filed by General Counsel.

Dec. 11—Order, extending time to 2-14-46 to prepare and transmit the record, entered.

1946

Feb. 11—Certified copy of an order from Sixth Circuit extending time to 4-15-46 to prepare and transmit the record filed.

Mar. 22—Statement of Points filed by General Counsel with statement of service thereon.

Mar. 22—Designation of contents of record on review filed by General Counsel. Statement of service thereon.

PETITION

(Filed September 1, 1944)

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 6, 1944, bearing the symbols "IRA:90D". For the basis of his proceeding petitioner alleges as follows:

1. The Petitioner's address is 590 The Arcade, Cleveland 14, Ohio.

2. The statutory notice of deficiency, a copy of which is attached hereto, marked "Exhibit A", was mailed to the Petitioner on June 6, 1944.

3. The taxes in controversy are an alleged deficiency in income tax liability for the taxable year ended December 31, 1941, in the amount of $7,110.33.

4. The determination of the tax set forth in said notice of deficiency is based upon the following errors:

A. The Commissioner erred in disallowing a long term capital loss of $21,276.53 on the sale of certain stocks sold by the Petitioner during the year 1941.

B. The Commissioner erred in determining that there was a deficiency of $7,110.33 in taxes due from the taxpayer for the taxable year ended December 31, 1941.

5. The facts upon which the Petitioner relies as the basis for his appeal are as follows:

A. Taxpayer during the taxable year ended December 31, 1941, sold the securities set forth below on the dates shown, incurring the long term capital loss set forth:

DATE	STOCK	LONG TERM CAPITAL LOSS
July 3	500 sh. International Nickel of Canada, Ltd., with a loss claimed of	$ 4,605.69
Dec. 10	200 sh. International Nickel of Canada, Ltd., with a loss claimed of	2,945.30

DATE		STOCK	LONG TERM CAPITAL LOSS
Brought forward			$ 7,550.99
July 3	200 sh.	Eastman Kodak Co. with a loss claimed of	3,665.03
July 3	500 sh.	General Electric Co., with a loss claimed of	3,145.89
Dec. 10	200 sh.	General Electric Co., with a loss claimed of	2,188.31
July 3	100 sh.	Mosanto Chemical Co., with a loss claimed of	1,612.95
Dec. 10	100 sh.	Cerro de Pasco, with a loss claimed of	1,610.53
Dec. 10	100 sh.	Westinghouse Electric Co., with a loss claimed of	1,502.83
		Total	$21,276.53

All of said sales were made on the New York Stock Exchange and said stock was purchased on behalf of purchasers unknown to the taxpayer. In each instance the order for the sale of said securities was given to Curtiss, House & Co., stockbrokers of the City of Cleveland, Ohio, and was executed on the New York Stock Exchange in the regular manner through Clark, Dodge & Co., correspondents of the said Curtiss, House & Co. All of said securities had been acquired by the taxpayer more than eighteen months prior to their sale and the long term capital losses in the amount of $21,276.53 incurred by the taxpayer should therefore be allowed.

WHEREFORE, petitioner prays that this Court may hear proceedings and determine:

That the loss realized by taxpayer on the sale of said securities set forth above constitutes a long term capital loss, and that the Commissioner erred in disallowing said loss.

Petitioner further prays this Court to determine his proper tax for the year ended December 31, 1941, and

that it grant such further relief to petitioner as it may deem to be just and equitable.

JNO. A. HADDEN,
Counsel for Petitioner.
1882 Union Commerce Building
Cleveland 14, Ohio, Main 2905.

STATE OF OHIO }
CUYAHOGA COUNTY, } ss:

John P. McWilliams, being first duly sworn, deposes and says that he is the taxpayer in question; that he has read the contents of the foregoing petition and that the facts therein stated are true as he verily believes.

JOHN P. McWILLIAMS.

Sworn to before me and subscribed in my presence this 24th day of July, 1944.

(SEAL) MARIAN DORATY, *Notary Public.*

My Commission Expires Feb. 4, 1945.

EXHIBIT "A"

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Cleveland 15, Ohio

June 6, 1944

OFFICE OF — REGISTERED
INTERNAL REVENUE AGENT IN CHARGE
Cleveland Division
Cleveland
IRA:90D

Mr. John P. McWilliams,
590 The Arcade,
Cleveland, Ohio.

Dear Mr. McWilliams:

You are advised that the determination of your income tax liability for the taxable year ended December 31,

1941 discloses a deficiency of $7,110.33 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Cleveland 15, Ohio, for the attention of IRA:90D. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner,
By (Signed) J. S. ROWLAND,
Acting Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver
AF:egh

STATEMENT

CLEVELAND
IRA:90D

In re: Mr. John P. McWilliams,
590 The Arcade,
Cleveland, Ohio.

Tax Liability for the Taxable Year Ended December 31, 1941

	Liability	Assessed	Deficiency
Income Tax	$31,170.88	$24,060.55	$7,110.33

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated October 2, 1943, to your protest sworn to December 23, 1943 and to the statements made at the conference held on January 5, 1944.

A copy of the statutory notice of the deficiency together with a copy of this statement has been mailed to your representative, Mr. John A. Hadden, 1882 Union Commerce Building, Cleveland, Ohio, in accordance with the authority contained in the power of attorney executed by you and on file with this office.

Adjustments to Net Income

Taxable Year Ended December 31, 1941

Net income as disclosed by return		$43,233.52
Unallowable deductions and additional Income:		
(a) Interest	$ 160.71	
(b) Long term capital loss	21,751.58	
(c) Partnership loss	767.65	22,679.94
Net income adjusted		$65,913.46

Explanation of Adjustments

(a) Interest received of $160.71 on corporation bonds which were acquired from your father's estate has been included in your taxable income.

(b) Under Item 7(b) of your return for the year 1941 you claimed net long-term losses from the sale or exchange of capital assets aggregating $28,113.43. The following losses claimed from the sale of securities have been disallowed under the provisions of Section 24(b) of the Internal Revenue Code:

DESCRIPTION	LOSS CLAIMED
300 International Nickel of Canada	$2,914.12
200 Eastman Kodak	3,665.03
500 General Electric	3,145.89
200 International Nickel of Canada	1,691.57
100 Monsanto Chemical	1,612.95
100 Cerro de Pasco	1,610.53
200 General Electric	2,188.31
200 International Nickel	2,945.30
100 Westinghouse	1,502.83
Total	$21,276.53

The loss claimed in Item 7(b) is further decreased by the disallowance of $475.05 claimed on the sale of Kirtland Club stock which is not a proper deduction for income tax purposes and results in a total increase of $21,751.58 to your taxable income.

(c) The Fort Dickinson farm partnership loss claimed of $1,700.21 is reduced to $932.56, resulting in an increase of $767.65 to your taxable income.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1941

ALTERNATIVE TAX:		
Net income adjusted		$65,913.46
Plus:		
Net long term loss		6,361.85
Ordinary net income		$72,275.31
Less:		
Personal exemption	$1,500.00	
Credit for dependents	1,600.00	3,100.00
Balance (surtax net income)		$69,175.31

Balance (surtax net income)	$69,175.31
Less:	
Earned income credit	1,400.00
Net income subject to normal tax	$67,775.31
Normal tax at 4% on $67,775.31	$ 2,711.01
Surtax on $69,175.31	30,493.43
Partial tax	$33,204.44
Minus:	
30% of net long term loss	1,908.56
Alternative tax	$31,295.88
Less:	
Income tax paid to a foreign country	125.00
Total income tax	$31,170.88
Income tax assessed:	
Original, account No. 332622	24,060.55
Deficiency of income tax	$ 7,110.33

ANSWER

(Filed October 2, 1944)

Comes Now the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition herein, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are a deficiency in income tax liability for the taxable year ended December 31, 1941 in the amount of $7,110.33.

4 A. and B. Denies that in the determination of the deficiency herein the respondent erred in the manner and form as alleged in subparagraphs A and B of paragraph 4 of the petition.

5 A. For lack of sufficient information upon which to base a belief as to the truth of the allegations of fact contained in subparagraph A of paragraph 5 of the petition, respondent hereby denies the same.

Denies generally each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the taxpayer's petition be denied and that the respondent's determination be in all respects approved.

(Signed) J. P. Wenchel, TFC
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

DeWitt M. Evans,
Division Counsel,

Lawrence R. Bloomenthal,
Special Attorney,
Bureau of Internal Revenue.

OPINION

(Promulgated August 20, 1945)

5 T. C. No. 73

THE TAX COURT OF THE UNITED STATES

JOHN P. MCWILLIAMS, PETITIONER, v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

ESTATE OF SUSAN P. MCWILLIAMS, Deceased, JOHN P. MCWILLIAMS, Executor, PETITIONER, v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

BROOKS B. MCWILLIAMS, PETITIONER, v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket Nos. 5945, 5946, 5947. Promulgated August 20, 1945.

Sales of listed securities through the New York Stock Exchange by several members of a family followed by purchases through the Exchange of like securities at the same prices by other members of the family, *held*, not sales "between members of the family" within the meaning of section 24 (b) (1) (A) of the Internal Revenue Code. *Pauline Ickelheimer*, 45 B. T. A. 478, followed.

John A. Hadden, Esq., for the petitioners.
Lawrence R. Bloomenthal, Esq., for the respondent.

OPINION

SMITH, *Judge*: These proceedings, consolidated for hearing, involve income tax deficiencies as follows:

DOCKET NO.	PETITIONER	YEAR	DEFICIENCY
5945	John P. McWilliams	1941	$7,110.33
5946	Estate of Susan P. McWilliams	1940	296.75
5947	Brooks B. McWilliams	1940	1,845.52
		1941	4,184.07

Opinion

In the determination of the deficiencies the respondent has disallowed the deduction of capital losses which the taxpayers claimed on the sale of securities, on the ground that they constituted losses on sales of property made directly or indirectly between members of a family as defined in paragraph (2) (D) of section 24 (b) of the Internal Revenue Code.

Petitioners, John P. McWilliams and Brooks B. McWilliams, are husband and wife, and are residents of Cleveland, Ohio. Susan P. McWilliams, deceased, was the mother of John P. McWilliams. She died in November, 19[illegible], and John P. McWilliams was appointed executor of her estate. The income tax returns for the years involved were filed with the collector of internal revenue for the eighteenth district of Ohio.

John P. McWilliams, hereinafter referred to as petitioner, is president of the Youngstown Steel Door Co. In 1940 and 1941 he bought and sold a considerable amount of securities for his own and his wife's account, and also for his mother's account until her death. Petitioner's wife and mother both had large estates of their own which petitioner managed for a number of years.

The sales of securities which gave rise to the losses here in controversy admittedly were for the purpose of establishing tax losses. In each instance petitioner would give his broker an order by phone to sell for his or his wife's, or his mother's account a certain number of shares of a particular stock at market and, at the same time would instruct the broker thereafter to purchase at as nearly the same price as possible a like number of shares of the same stock for the account of one of the others. In each instance the broker was told that the sale was for the purpose of establishing a tax loss.

During the taxable years the following shares of stock were sold by petitioner for his individual account and for his wife's account:

DOCKET NO. 5945—JOHN P. MCWILLIAMS YEAR 1941

700 shares of International Nickel of Canada, Ltd.
200 shares of Eastman Kodak Co.

700 shares of General Electric Co.
100 shares of Monsanto Chemical Company
100 shares of Cerro de Pasco
100 shares of Westinghouse Electric Co.

DOCKET NO. 5947—BROOKS B. MCWILLIAMS YEAR 1940

300 shares of General Electric
100 shares of Standard Oil Co. of N. J.
200 shares of International Nickel Co. of Canada, Ltd.

YEAR 1941

1000 shares of Basic Refractories, Inc.
300 shares of Libby-Owens-Ford Glass Co.
100 shares of E. I. DuPont deNemours Co.
200 shares of General Motors Corporation
100 shares of American Tel. & Tel. Co.
200 shares of Liggett & Myers Tobacco Co.

All of the above securities were sold pursuant to orders given to Curtiss-House & Co., stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clark, Dodge & Co., members of the New York Stock Exchange and correspondents of Curtiss-House & Co. The securities had all been acquired and held by the taxpayers more than 18 months prior to their sale. The purchasers of the securities were unknown to the taxpayers.

At the time that petitioner placed the orders for sale of the above securities for his individual account he instructed his brokers to purchase a like number of the same shares at as nearly the same price as possible for the account of his wife. Likewise, when giving the orders to sell the shares for his wife's account he instructed his brokers to purchase a like number of the same shares for his individual account. These instructions were carried out and new certificates bearing different numbers from those sold were issued to the taxpayers. The purchase orders were executed in the same manner as the sales orders.

Petitioner's wife in 1940 and 1941 owned property greatly in excess of the amounts involved in the trans-

actions under consideration. During all of her married life her securities have stood in her own name and have been kept separate from those of the petitioner. She has maintained a separate bank account and she and petitioner have filed separate income tax returns.

On the above-mentioned sales petitioner claimed long-term capital losses of $21,276.53 in 1941 and his wife $5,592.49 in 1940, and $13,946.95 in 1941. The deductions were disallowed by the respondent as coming within the provisions of section 24 (b) of the Internal Revenue Code. The correctness of respondent's determination in this respect is the only question presented in these proceedings.

Under substantially the same circumstances as those described above, relating to the sales and purchases of securities by petitioner and his wife, petitioner on November 28, 1940, sold 100 shares of Eastman Kodak Co. stock for the account of Susan P. McWilliams and on the same day purchased a like number of the same shares for his individual account. A long-term capital loss on the sale of those shares in the amount of $1,755.79 was claimed in the return filed by Susan P. McWilliams, and was disallowed by respondent.

Section 24 (b) provides in material part as follows:

> SEC. 24. ITEMS NOT DEDUCTIBLE.
>
> * * * * * * *
>
> (b) Losses From Sales Or Exchanges Of Property.
>
> (1) Losses Disallowed.—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—
>
> (A) Between members of a family, as defined in paragraph (2) (D);
>
> * * * * * * *
>
> (D) Between grantor and a fiduciary of any trust.

We think that the question presented here is controlled by our decision in *Pauline Ickelheimer*, 45 B. T. A. 478; affd. (C. C. A., 2nd Cir.), 132 Fed. (2d) 660. In that case

the taxpayer's husband, acting as her attorney in fact, sold for her account over a period of nine days $100,000 face value of Postal Telegraph & Cable Corporation bonds and within a day or two after such sales he repurchased a like number of the same bonds, acting as trustee of a trust of which his wife was beneficiary. All of such sales and purchases were made through a broker dealing on the New York Stock Exchange. We held, by a divided Court, that the sales of the bonds were not sales between petitioner and her husband, that is, "between the fiduciary of a trust and a beneficiary of such trust" within the meaning of section 24 (a) (6) of the Revenue Act of 1936, as amended by section 301 (a) of the 1937 Act (section 24 (b) (1) (F) of the Internal Revenue Code), and that the loss thereon was deductible as a capital loss in the taxpayer's return for 1937. We said in our opinion that:

> • • • It is apparent that the sales of the bonds were made to purchasers other than the trustee of the trust. The fact that petitioner's husband as trustee purchased the bonds from the open market shortly thereafter does not convert the sales by petitioner and the purchases by her husband as trustee into indirect sales *between* petitioner and her husband as trustee. Nor does the fact that the transactions were carried out with a view to obtaining a loss deduction and to avoid the effects of section 118 so color these transactions that sales to others may be termed indirect sales from petitioner to her husband as trustee.
>
> Respondent contends that, since petitioner's husband acted for petitioner under power of attorney and for the trust as its trustee, one directing mind controlled the sales and purchases of the bonds so that the sales must be considered to have been indirectly made between petitioner and her husband as trustee. He asserts that the presence of a preconceived plan to permit a loss deduction for petitioner and yet obtain the bonds for the trust, plus the fact that the sales and purchases were directed by petitioner's husband, indicates that the bonds were sold,

indirectly, by petitioner to her husband as trustee for the trust. We can not agree. We find no authority in the law or the decided cases for the position taken by respondent. Nor do statements in Congressional Committee reports shed any light on the question.

That case stands for the proposition that where listed securities are sold through the Stock Exchange to an unknown purchaser, and like securities are purchased through the Exchange from an unknown seller by some person having a relationship to the seller such as that described in section 24 (b) (1), Internal Revenue Code, the transaction does not constitute a sale of property upon which a loss deduction is denied under the statute.

Since the statute treats alike sales of property between the fiduciary and a beneficiary of a trust and those between members of a family, our holding in the *Ickelheimer* case, supra, applies with equal force here.

While the facts in the instant proceedings as to the manner in which the sales and purchases were made differ somewhat from those in the *Ickelheimer* case, the differences are not substantial and do not afford sufficient grounds for distinguishing the cases on principle.

Decisions of no deficiencies will be entered.

DECISION

(Entered August 20, 1945)

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated August 20, 1945, it is

ORDERED and DECIDED: That there is no deficiency in income tax for the calendar year 1941.

Enter:

(Signed) CHARLES P. SMITH, *Judge.*

PETITION FOR REVIEW

(Filed November 16, 1945)

The petitioner on review, the duly appointed, qualified and acting Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States, here by petitions the United States Circuit Court of Appeals for the Sixth Circuit to review the decision entered by The Tax Court of the United States on August 20, 1945, ordering and deciding that there is no deficiency in income tax due for the calendar year 1941 from John P. McWilliams, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The taxpayer's Federal income tax return for the calendar year 1941, the taxable year involved, was filed with the Collector of Internal Revenue for the Eighteenth District of Ohio whose office is located in Cleveland, Ohio, and within the jurisdiction of the United States Circuit Court of Appeals for the Sixth Circuit.

(Signed) SAMUEL O. CLARK, JR., CAR
Assistant Attorney General

(Signed) J. P. WENCHEL, CAR
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

NOTICE OF FILING PETITION FOR REVIEW

(Filed November 19, 1945)

To: John A. Hadden, Esq.,
1882 Union Commerce Building
Cleveland 14, Ohio

You are hereby notified that the Commissioner of Internal Revenue did, on the 16th day of November, 1945, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit of

the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 19th day of November, 1945.

(s) B. D. GAMBLE, *Clerk,*
The Tax Court of the United States.

Service of copy of petition for review acknowledged this ..... day of November, 1945.

.....
Counsel for Respondent on Review.

NOTICE OF FILING PETITION FOR REVIEW

(Filed November 20, 1945)

To: Mr. John P. McWilliams
590 The Arcade
Cleveland 14, Ohio

You are hereby notified that the Commissioner of Internal Revenue did, on the 16th day of November, 1945, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for Review by the United States Circuit Court of Appeals for the Sixth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 16th day of November, 1945.

(Signed) J. P. WENCHEL, CAR
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this ..... day of November, 1945.

(Signed) JOHN P. MCWILLIAMS,
Respondent on Review.

STATEMENT OF POINTS

(Filed March 22, 1946)

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by and through his attorneys, Sewall Key, Acting Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and makes this concise statement of points on which he intends to rely on the review herein, to-wit:

1. The Tax Court of the United States erred in entering its decision wherein and whereby it is ordered and decided that there is no deficiency in income tax for the calendar year 1941.

2. The Tax Court of the United States erred in failing and refusing to hold that there is a deficiency in tax for the calendar year 1941 in the amount of $7,110.33.

3. The Tax Court of the United States erred in holding and deciding that the facts do not disclose an indirect sale between members of a family within the meaning of Section 24(b)(1)(A) of the Internal Revenue Code.

4. The Tax Court of the United States erred in failing and refusing to hold and decide that the facts disclose an indirect sale by the taxpayer to his wife, Brooks B. McWilliams, within the meaning of Section 24(b)(1)(A) of the Internal Revenue Code.

5. The Tax Court of the United States erred in that its opinion and decision are not supported by but are contrary to its findings of fact.

6. The Tax Court of the United States erred in that its opinion and decision are not supported by but are contrary to the evidence and the facts as stipulated by the parties.

7. The Tax Court of the United States erred in that its opinion and decision are not supported by the evidence and are contrary to law.

(Signed) Sewall Key,
Acting Assistant Attorney General.

(Signed) J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

Statement of Service:

A copy of this statement of points was mailed to John A. Hadden, Esq., 1882 Union Commerce Building, Cleveland 14, Ohio, attorney for respondent on review, on March 22, 1946.

(Signed) CHAS. E. LOWERY,
Special Attorney,
Bureau of Internal Revenue.

STIPULATION No. 5945

(Filed at Hearing April 19, 1945)

THE TAX COURT OF THE UNITED STATES

JOHN P. McWILLIAMS, *Petitioner,* vs. COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	}	Docket No. 5945

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts are true and may be received and considered as being in evidence, subject, however, to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. The petitioner, John P. McWilliams, is an individual whose place of business during the taxable years in question herein was 590 The Arcade, Cleveland, Ohio. The taxes in controversy are income taxes for the taxable year ended December 31, 1941, in the amount of $7,110.33. Notice of Deficiency was mailed by the Commissioner on June 6, 1944.

2. In computing said deficiency for the year ended December 31, 1941, the Commissioner disallowed a long-term capital loss claimed by the taxpayer amounting to $21,276.53 for the year e ed December 31, 1941, reported by

the taxpayer arising out of the sale of the following capital assets:

700 shares of International Nickel of Canada, Ltd.,
200 shares of Eastman Kodak Co.,
700 shares of General Electric Co.,
100 shares of Monsanto Chemical Company,
100 shares of Cerro de Pasco,
100 shares of Westinghouse Electric Company.

3. The aforesaid capital losses claimed by the taxpayer were disallowed by the Commissioner upon the ground that they were not allowable under the provisions of Section 24(b) of the Internal Revenue Code.

4. All of the securities listed in paragraph 2 herein were sold pursuant to orders given by the taxpayer for the sale of these stocks to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clarke, Dodge & Company, members of the New York Stock Exchange and correspondents to said Curtiss-House & Company. Said securities had been acquired and held by the taxpayer more than eighteen months prior to their sale and were purchased by persons undisclosed to and unknown to the taxpayer at the time of sale.

5. At the time that orders were placed by this taxpayer for the sale of the above-listed securities, orders were given by him to Curtiss-House & Company to purchase stock of the same companies at approximately the same prices for Brooks B. McWilliams, wife of the taxpayer. Said orders were duly executed by the purchase of stock of the same companies represented by certificates bearing different numbers than those sold by the taxpayer; these purchase orders were executed in the regular manner on the New York Stock Exchange by Clark, Dodge & Company, the aforesaid correspondents of Curtiss-House & Company. The securities sold and purchased by the taxpayer and his wife, respectively, are set forth in the schedule attached hereto, together with other pertinent data, and marked "Joint Exhibit A-1."

6. It is further stipulated and agreed that photostatic copies of the customers' accounts carried on the books of Curtiss-House & Company in the names of John P. McWilliams and Brooks B. McWilliams, which are attached hereto, are true and correct copies of said book accounts and may be received in evidence as "Joint Exhibits B-2", and "C-3".

7. Photostatic copies of the income tax returns of John P. McWilliams for the years ended December 31, 1940 and 1941, which are attached hereto, may be received in evidence as "Joint Exhibit D-4", and "E-5".

JOHN A. HADDEN,
Counsel for Petitioner,

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

JOINT EXHIBIT No. A-1

Docket No. 5945

	No. of Shares	Stock	Price	Broker buying or selling stock	Certificate numbers
			John P. McWilliams sold:		
	100	General Electric	32-3/8	Thomson & McKinnon	760-996 & 97
	100	" "	32-3/8	Jackson & Curtis	758-141,142
	200	" "	32-1/4	Jesup & Lamont	& 143
	100	" "	32-1/4	Josephthal & Co.	
-10	100	" "	25-1/4	Pershing & Co.	722-031
	100	" "	25-1/8	Pershing & Co.	722-032
			Brooks B. McWilliams bought:		
-3	100	General Electric	32-3/8	Barr Cohen & Co.	818-421 to
	100	" "	32-3/8	R. L. Day & Co.	425 incl.
	100	" "	32-1/4	Auchincloss,Parker & Co	
	200	" "	32-1/4	Reynolds Fish & Co.	
10	100	" "	25-1/4	Carreau & Co.	832-874
	100	" "	25-1/8	Laird,Bissell & Meeds	832-875
			John P. McWilliams sold:		
-3	100	Eastman Kodak	133-3/8	Fenner & Beane	N 56-577
	100	" "	133-1/4	White Weld & Co.	N 56-367
			Brooks B. McWilliams bought:		
-3	100	Eastman Kodak	133-3/8	Morgan, Davis & Co.	N 60-140
	100	" "	133-1/4	Dominick & Dominick	N 60-141
			John P. McWilliams sold:		
-3	100	International Nickel	26-3/8	Pershing & Co.	367-604,
	100	" "	26-3/8	Lockwood,Peck & Co.	605
	100	" "	26-1/4	G.M.P.Murphy & Co.	606
	100	" "	26-1/4	Jesup & Lamont	365-074
	100	" "	26-1/4	Laidlaw & Co.	075
-10	200	" "	23	J. S. Bache & Co.	339-405
					332-469
			Brooks B. McWilliams bought:		
-3	200	International Nickel	26-3/8	Pressprich & Co.	404-531,532
	100	" "	26-1/4	Carlisle Mellick & Co.	-533
	100	" "	26-1/4	Baker Weeks & Harden	-534
	100	" "	26-1/4	Carlisle Mellick & Co.	-535
-10	200	" "	23	J.W.Seligman & Co.	411-861,862

Joint Exhibit No. A-1

Docket No. 5945
Joint Exhibit A-1, page 2

Date	No. of Shares	Stock	Price	Broker buying or selling stock	Certific Number
1941			John P. McWilliams sold:		
7-3	100	Monsanto Chemical	83	Carlisle Mellick & Co.	(N 31-74
			Brooks B. McWilliams bought:		
7-3	100	Monsanto Chemical	83	Harris Upham & Co.	(N 35-53
			John P. McWilliams sold:		
12-10	100	Cerro de Pasco	25-3/4	J.H.Oliphant & Co.	(122-40
			Brooks B. McWilliams bought:		
12-10	100	Cerro de Pasco	25-3/4	Hoppin Bros. & Co.	(131-81
			John P. McWilliams sold:		
12-10	100	Westinghouse Elec.	72-7/8	Carreau & Co.	(231-23
			Brooks B. McWilliams bought:		
12-10	100	Westinghouse Elec.	72-7/8	E. Hutton & Co.	(251-09

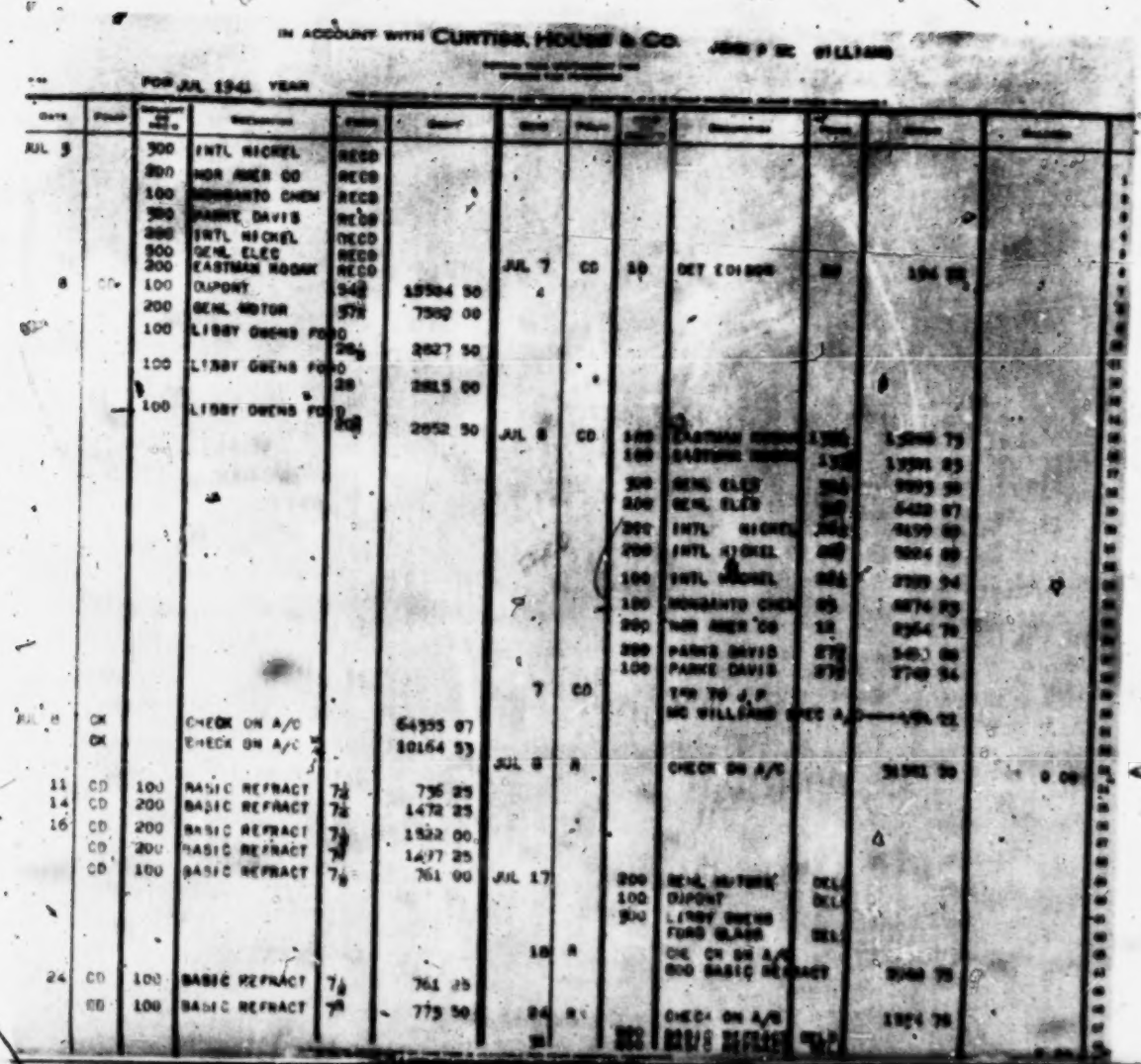
The amount received by taxpayer in each instance was the price indicat less commissions and taxes. The amount paid by Brooks B. McWilliams i each instance was the price plus commissions and taxes.

JOINT EXHIBIT No. B-2

ACCOUNT WITH CURTISS, HOUSE & CO.

FOR NOV 1940 YEAR

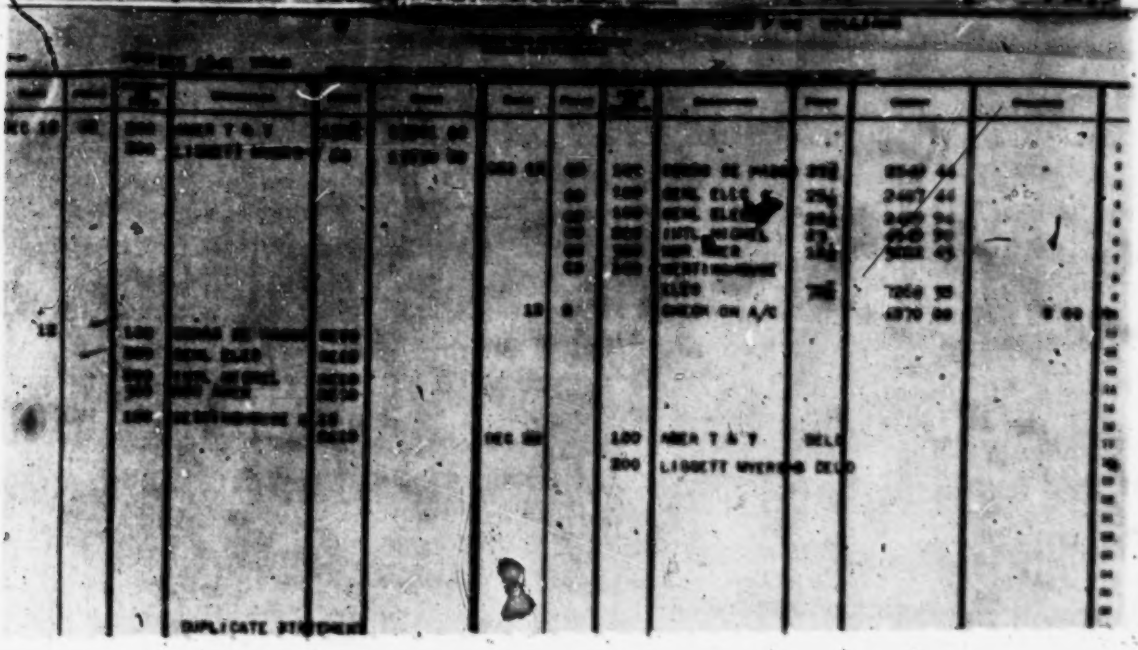
DATE	FOLIO	AMOUNT OF SALE	DESCRIPTION	PRICE	DEBIT	DATE	FOLIO	AMOUNT OF SALE	DESCRIPTION	PRICE	CREDIT	BALANCE
NOV 9		10M	YDS S & T 5½8/11/1/60 A/C PURCH AT 103	RECD								
9	J		A/C 10M YDS S & T 5½8/60 -D-									
			BOUGHT AT 103		10307 22							
9	CT		CHECK ON A/C		129 45							
					0	NOV 9		10M	YDS S & T 48/51-8 A/C REDEMP	DEL		
						9	R		CHECK ON A/C REDEMP OF 10M YDS S & T 48/51		10456 67	0 00
						NOV 12		10M	YDS S & T 1ST MTGE 5½8/60-D	DELD		
NOV 29	CD	200	GENL ELEC	32½	6582 00							
	CD	100	GENL ELEC	32⅞	3278 50							
	CD	200	INTER NICKEL	25¼	5080 00							
	CD	100	SO OF N J	34⅛	3441 25	NOV 29	R		CHECK ON A/C		18561 75	
						30	R		CHECK ON A/C		14077 25	
NOV 30			BALANCE	LONG		NOV 30			BALANCE		14077 25	
		300	GENL ELEC									
		200	INTER NICKEL									
		100	SO OF N J									
			DUPLICATE STATEMENT									



IN ACCOUNT WITH CURTISS, HOUSE & CO.

FOR JUL 1941 YEAR

DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	DEBIT	DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	CREDIT	BALANCE
JUL 5		300	INTL NICKEL	RECD								
		300	NOR AMER CO	RECD								
		100	MONSANTO CHEM	RECD								
		300	PARKE DAVIS	RECD								
		200	INTL NICKEL	RECD								
		500	GENL ELEC	RECD								
		200	EASTMAN KODAK	RECD		JUL 7	CD	10	DET EDISON		194 [illegible]	
8		100	DUPONT	548	18584 50							
		200	GENL MOTOR	578	7592 00							
		100	LIBBY OWENS FORD	28	2827 50							
		100	LIBBY OWENS FORD	28	2815 00							
		100	LIBBY OWENS FORD	28	2852 50	JUL 8	CD	100	EASTMAN KODAK	1385	15000 75	
								100	EASTMAN KODAK	1385	15391 85	
								300	GENL ELEC	2[illegible]	9997 50	
								200	GENL ELEC	2[illegible]	6688 67	
								200	INTL NICKEL	2[illegible]	4199 00	
								200	INTL NICKEL	2[illegible]	7804 00	
								100	INTL NICKEL	2[illegible]	3899 94	
								100	MONSANTO CHEM	2[illegible]	4874 93	
								300	NOR AMER CO	2[illegible]	9564 78	
								300	PARKE DAVIS	2[illegible]	5481 00	
								100	PARKE DAVIS	2[illegible]	3749 94	
						7	CD		TAX TO J P MC WILLIAMS EXEC A/C		[illegible] 22	
JUL 8	CK		CHECK ON A/C		64355 07							
	CK		CHECK ON A/C		10164 53							
						JUL 8	R		CHECK ON A/C		38981 39	0 00
11	CD	100	BASIC REFRACT	7½	736 25							
14	CD	200	BASIC REFRACT	7½	1472 25							
16	CD	200	BASIC REFRACT	7½	1522 00							
	CD	200	BASIC REFRACT	7½	1497 25							
	CD	100	BASIC REFRACT	7½	761 00	JUL 17		200	GENL MOTORS	DELI		
								100	DUPONT	DELI		
								300	LIBBY OWENS FORD GLASS	DELI		
						18	R		CHK ON ON A/C			
24	CD	100	BASIC REFRACT	7½	761 25				800 BASIC REFRACT		3048 75	
	CD	100	BASIC REFRACT	7½	775 50	24	R		CHECK ON A/C		1924 75	



DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	DEBIT	DATE	FOLIO	QUANTITY	DESCRIPTION	ITEMS	CREDIT	BALANCE
DEC 10		200	AMER T & T	DELI	[illegible] 00							
		200	LIGGETT MYERS CO	DELI	[illegible] 00							
						DEC 10	CD	100	[illegible]	2[illegible]	8549 44	
								100	GENL ELEC	2[illegible]	2467 44	
								100	GENL ELEC	2[illegible]	2[illegible]	
								200	INTL NICKEL	2[illegible]	2[illegible]	
								200	NOR AMER	2[illegible]	2[illegible]	
								100	[illegible]	2[illegible]	7250 00	
						10	R		CHECK ON A/C		4870 00	0 00
12		100	[illegible]	DELI								
		200	GENL ELEC	DELI								
		200	INTL NICKEL	DELI								
		200	NOR AMER	DELI								
		200	[illegible]	DELI								
						DEC 12		100	AMER T & T	DELI		
								200	LIGGETT MYERS CO	DELI		

DUPLICATE STATEMENT

Joint Exhibit No. B-2

26

Joint Exhibit No. B

27

IN ACCOUNT WITH CURTISS, HOUSE & CO.

MRS BROOKS S MC WILLIAMS

FOR NOV 1948 YEAR

DATE	QUANTITY	SECURITIES	PRICE	DEBIT	DATE	POSTED	QUANTITY DELIVERED	DESCRIPTION	PRICE	CREDIT	BALANCE
		BALANCE	LONG								0
	10M	YOS S & T 45/61									
	500	YOS STEEL DOOR									
					NOV 1	CD	100	YOS STEEL DOOR	20¼	1999 98	
						CD	200	YOS STEEL DOOR	20¼	3999 66	
					6	CD	200	YOS STEEL DOOR	20¼	3999 66	
		CHECK ON A/C		3999 27	NOV 12	CD	100	YOS STEEL DOOR	20¼	1999 70	
						CD	100	YOS STEEL DOOR	20¼	1999 95	
						CD	100	YOS STEEL DOOR	20¼	2024 98	
						CD	100	YOS STEEL DOOR	20¼	2024 98	
	10M	YOS S A T 5½/1/1/60									
		A/C PURCH AT 103									
			RECD								
		A/C 10M YOS S & T 5½/60-0 AT 103		10307 22							
	500	YOS STEEL DOOR	RECD								
		CHECK ON A/C		129 45	NOV 9		10M	YOS S & T 48/61			
								CHECK ON A/C	DELD		
								REDEMP OF 10M YOS S & T 48/61		10436 67	
					13	CD	200	YOS STEEL DOOR	20½	4099 91	
						CD	100	YOS STEEL DOOR	20½	2049 70	
		CHECK ON A/C									0 00
	500	YOS STEEL DOOR		14147 16							
					NOV 12		10M	YOS S & T 1st MTGE 5½/60-0	DELD		
					29	CD	200	GENL ELEC	32½	6497 61	
						CD	100	GENL ELEC	32⅝	3236 43	
						CD	200	INTL NICKEL	25¼	4999 89	
						CD	100	SO OF N J	34¼	3403 43	
	10M	DOM OF CANADA									
	10M	NICKEL PLATE									
			RECD								
	200	INTL NICKEL	RECD								
	100	SO OF N J	RECD								
		GENL ELEC	RECD								
		CHECK ON A/C									
		200 GENL ELEC									
		100 SO OF N J									
	200	INTL NICKEL		10157 32							

MRS BROOKS S MC WILLIAMS

IN ACCOUNT WITH CURTISS, HOUSE & CO.

FOR NOV 1948 YEAR

NO 2

DATE	QUANTITY	SECURITIES	PRICE	DEBIT	DATE	POSTED	QUANTITY DELIVERED	DESCRIPTION	PRICE	CREDIT	BALANCE
NOV 30		BALANCE	LONG								
	10M	DOM OF CANADA 5½/67									
	10M	NICKEL PLATE 4½/65									
	500	YOS STEEL DOOR									
		DUPLICATE STATEMENT									

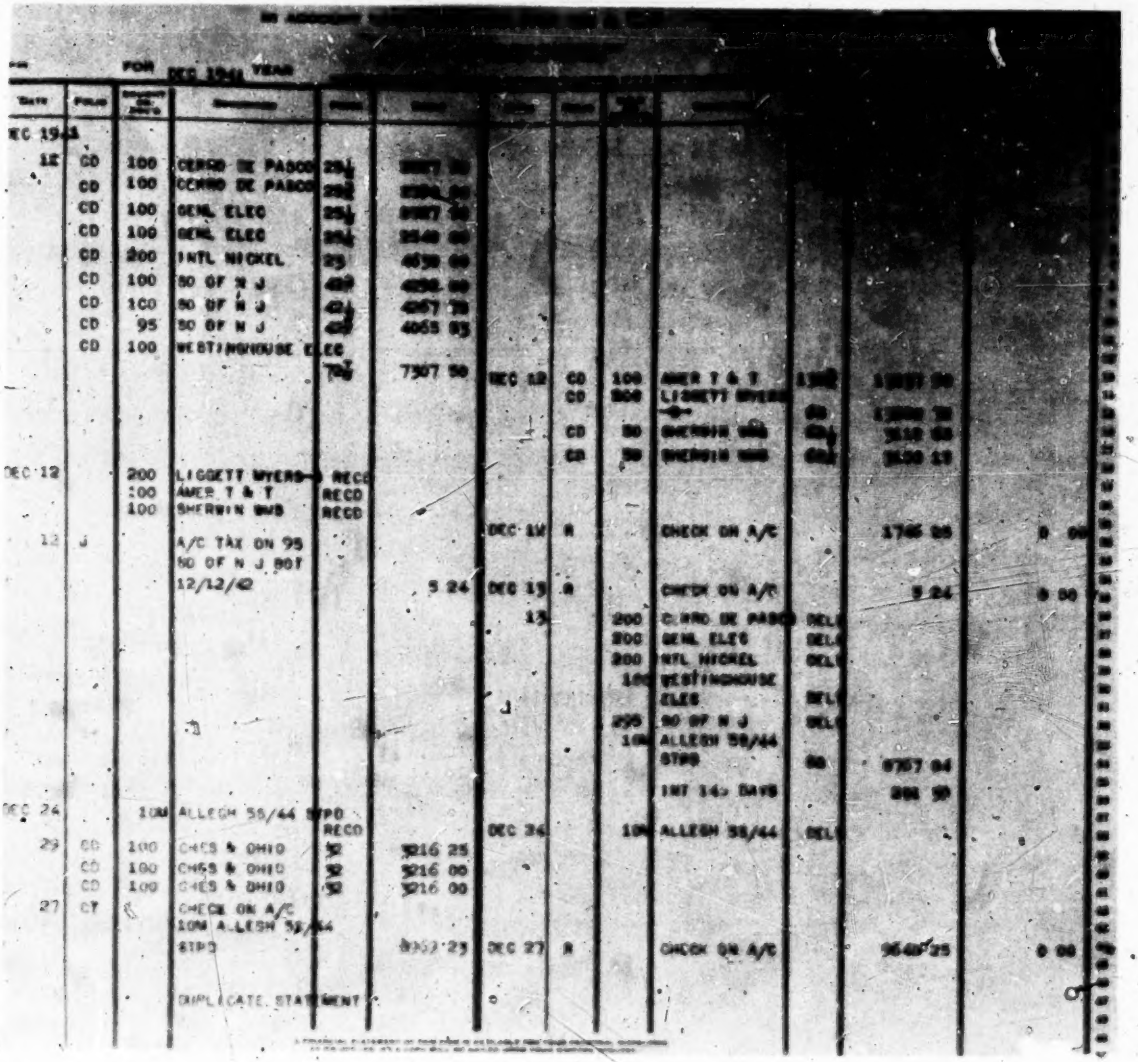
IN ACCOUNT WITH CURTISS, HOUSE & CO.

MRS BROOKS & MC WILLIAMS

DATE	PAGE	QUANTITY BOUGHT	DESCRIPTION	PRICE	DEBIT	DATE	FOLIO	QUANTITY DELIVERED	DESCRIPTION	PRICE	
DEC 31	19-20		BALANCE	LONG							
		500	YOS STEEL DOOR								
JUL 5	1948	300	LIBBEY OWENS FORD GLASS	RECD							
		800	GENL MOTOR	RECD							
		100	DUPONT	RECD							
		1000	BASIC REFRACT	RECD							
						JUL 7	CD	100	YOS STEEL DOOR	16¼	
							CD	200	YOS STEEL DOOR	16¼	
JUL 8	CD	100	EASTMAN KODAK	135¼	13531 00						
		100	EASTMAN KODAK	135⅜	13563 50						
		300	GENL ELEC	32½	9726 00						
		200	GENL ELEC	32⅝	6507 00						
		100	INTL NICKEL	26¼	2640 00						
		200	INTL NICKEL	26¼	5280 00						
		200	INTL NICKEL	26½	5305 00						
		100	MONSANTO CHEM	83	8321 00	JUL 8	CD	100	DUPONT	144½	
								200	GENL MOTORS	99½	
								100	LIBBY OWENS FORD GLASS	29⅞	
								100	LIBBY OWENS FORD GLASS	29⅝	
								100	LIBBY OWENS FORD GLASS	29	
						JUL 7	R		CHECK ON A/C		
JUL 8	CK		CHECK ON A/C		31323 45						
	CK		CHECK ON A/C								
			500 YOS STEEL DOOR		4808 64	JUL 11	CD	100	BASIC REFRACT	7¼	
						14	CD	200	BASIC REFRACT	7¼	
						15	CD	200	BASIC REFRACT	7⅛	
						16	CD	200	BASIC REFRACT	7⅛	
							CD	100	BASIC REFRACT	7⅛	
						17		500	INTL NICKEL	DEL'D	
								100	MONSANTO CHEM	DEL'D	
								200	EASTMAN KODAK	DEL'D	
								500	GENL ELEC	DEL'D	
JUL 18	CT		CHECK FOR A/C								
			800 BASIC REFRACT		5786 72	24	CD	100	BASIC REFRACT	7¼	
							CD	100	BASIC REFRACT	7⅛	
24	WC		CHECK FOR A/C								
			200 BASIC REFRACT		1484 11						

Joint Exhibit No. C-3

30



FOR DEC 1941 YEAR

DATE	FOLIO	QUANTITY	DESCRIPTION	FOLIO	AMOUNT	DATE	CODE	QUANTITY	DESCRIPTION	CODE	AMOUNT	
DEC 1941												
11	CD	100	CERRO DE PASCO	25½	3987 50							
	CD	100	CERRO DE PASCO	25½	3987 50							
	CD	100	GENL ELEC	25½	3987 50							
	CD	100	GENL ELEC	25½	3540 00							
	CD	200	INTL NICKEL	23	4650 00							
	CD	100	SO OF N J	42½	4250 00							
	CD	100	SO OF N J	42½	4257 75							
	CD	95	SO OF N J	42½	4065 63							
	CD	100	WESTINGHOUSE ELEC	74½	7307 50	DEC 12	CD	100	AMER T & T	[illegible]	[illegible]	
							CD	200	LIGGETT MYERS	[illegible]	[illegible]	
							CD	50	SHERWIN WMS	[illegible]	[illegible]	
							CD	50	SHERWIN WMS	[illegible]	[illegible]	
DEC 12		200	LIGGETT MYERS	RECD								
		100	AMER T & T	RECD								
		100	SHERWIN WMS	RECD								
						DEC 12	R		CHECK ON A/C		1746 88	R 00
12	J		A/C TAX ON 95 SO OF N J DIST 12/12/42		5 24	DEC 13	R		CHECK ON A/C		5 24	R 00
						13		200	CERRO DE PASCO	DEL		
								200	GENL ELEC	DEL		
								200	INTL NICKEL	DEL		
								100	WESTINGHOUSE ELEC	DEL		
						J		295	SO OF N J	DEL		
								100	ALLEGH 55/44 STPD			
										RD	9757 84	
									INT 14> DAYS		284 90	
DEC 24		100	ALLEGH 55/44 STPD	RECD		DEC 24		100	ALLEGH 55/44	DEL		
29	CD	100	CHES & OHIO	52	5216 25							
	CD	100	CHES & OHIO	52	5216 00							
	CD	100	CHES & OHIO	52	5216 00							
27	CT		CHECK ON A/C 100 ALLEGH 55/44 STPD		9362 25	DEC 27	R		CHECK ON A/C		9362 25	R 00
			DUPLICATE STATEMENT									

JOINT EXHIBIT No. D-4

UNITED STATES NOT INVESTIGATED

INDIVIDUAL INCOME AND DEFENSE TAX RETURN 1940

FOR GROSS INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES, REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning 1-1-40, 1940, and ended 12-31-40, 1940

(To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year)

PRINT NAME AND ADDRESS PLAINLY. (Give husband's name first)

McWilliams, John P.

820 The Arcade

Cleveland Cuyahoga Ohio

(Do not use these spaces)

No. 1936

Serial No. 200268

District 18-Ohio

(Collector's Stamp)

Cash Check M.O.

Page 1

INCOME		
1. Salaries and other personal service. (Show Schedule A)	$ 21,500 00	
2. Dividends	29,856 50	
3. Interest on bonds, notes, mortgages, etc.	42 00	
4. Interest on deposits in banks, etc.		
5. Taxable interest on Government obligations, etc. (Show Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Show Schedule C)		
7. Income from fiduciaries. (Show name and address)		
8. Rents and royalties. (Show Schedule D)		
9. Income (or loss) from business or profession. (Show Schedule E)		
10. (a) Net short-term gain from sale or exchange of capital assets. (Show Schedule F) 46.05		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (Show Schedule F)	482 02	
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (Show Schedule G)		
11. Other income (including income from annuities). (Show part to which taxable)		
12. Total income in items 1 to 11. (Show amounts taxable in Schedule H)		$ 70,723 48
DEDUCTIONS		
13. Contributions paid. (Explain in Schedule H)	$ 2,051 00	
14. Interest. (Explain in Schedule H)		
15. Taxes. (Explain in Schedule H)	4,032 24	
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)		
17. Bad debts. (Explain in Schedule H)		
18. Other deductions authorized by law. (Explain in Schedule H) Safety deposit box	30 00	
19. Total deductions in items 13 to 18.		6,114 24
20. Net income (item 12 minus item 19)		$ 64,609 24

COMPUTATION OF TAX

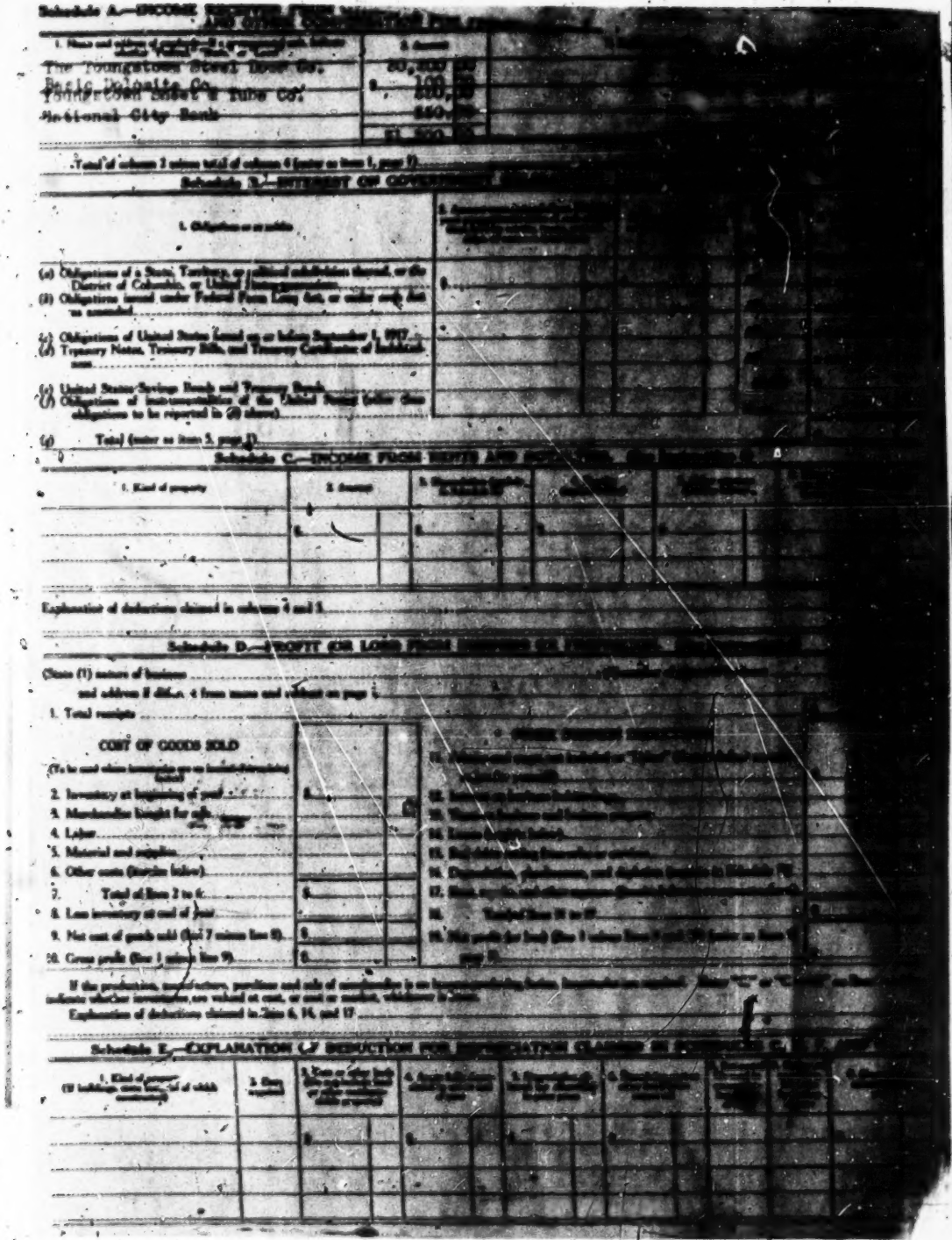
21. Net income (item 20 above)		$ 64,609 24	26. Normal tax (4% of item 21)	$ 2,584 37
22. Less: Personal exemption	$ 2,000 00		27. Surtax on item 24. (See instruction 26)	16,764 01
23. Credit for dependents	1,200 00		28. Total (item 25 plus item 26)	$ 19,348 38
24.		3,200 00	29. Total income (item 21, or if you had a net long-term capital gain or loss, enter item 21 of Schedule F)	$ 19,348 38
25. Balance (item 21 minus item 24)		$ 61,409 24	30. Less: Income tax paid at source (Explain in Schedule K)	$ 57 80
			31. Income tax paid to a foreign country or U.S. possession (Explain in Schedule K)	
			32. Balance of income tax (item 28 minus item 30 and 31)	$ 19,290 58
			33. Defense tax (10% of item 29) (See instruction 27)	1,934 80
			34. Total income and defense taxes due	

SCHEDULE F.

GAINS AND LOSSES FROM SALE OR EXCHANGE OF CAPITAL ASSETS

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sale	Gain or Loss	Percent	Gain or Loss
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS								
1-M Anaconda Copper	12-17-39	8-7-40	1,020.00	1,067.50	-	47.50	100	47.50
10-Units Washington Elec.	12-20-39	1-6-40	191.42	186.25	-	5.18	100	5.18
5-Units Washington Elec.	12-1-39	10-8-40	91.67	89.96	-	1.71	100	1.71
								54.39
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 BUT NOT MORE THAN 24 MONTHS								
8-M Anaconda Copper	7-10-39	8-7-40	8,170.00	8,460.96	-	290.96	66-2/3	193.97
100-Sherwin Williams Pfd.	11/4-12/27 1926	9-4-40	10,870.28	11,[illegible]2.15	10.00	408.87	66-2/3	271.25
								465.22
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD FOR MORE THAN 24 MONTHS								
10-M Youngs. S & T[illegible]61	1-28-27	11-2-40	13,[illegible]00.00	13,[illegible]11.60	-	[illegible]	[illegible]	78.60

Joint Exhibit No. D-4



Schedule A—INCOME RECEIVED FROM

1. Name and address of payer	2. Amount
The Youngstown Sheet Door Co.	50,000
Basic Dolomite Co.	100
Youngstown Sheet & Tube Co.	200
National City Bank	650
	$1,000

Total of column 2 enter total of column 4 (enter as item 1, page 1)

Schedule B—INTEREST ON GOVERNMENT

1. Obligations on which	2. Amount
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United [illegible]	$
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended	
(c) Obligations of United States issued on or before September 1, 1917	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness	
(e) United States Savings Bonds and Treasury Bonds	
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above)	
(g) Total (enter as item 5, page 1)	

Schedule C—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount	3. [illegible]	[illegible]	[illegible]
	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule D—PROFIT OR LOSS FROM [illegible]

Class (1) nature of business

and address if different from name and address on page 1

1. Total receipts

COST OF GOODS SOLD		
(To be used where inventories are an income-determining factor)		
2. Inventory at beginning of year	$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (Explain below)		
7. Total of lines 2 to 6	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)	$	
10. Gross profit (line 1 minus line 9)	$	

OTHER CURRENT DEDUCTIONS	
11. Advertising (not included in "other" deductions)	
12. Bad debts arising from sales or services	
13. Contributions	
14. Losses (other than)	
15. Repairs	
16. Depreciation, depletion, and obsolescence (explain in schedule H)	
17. Rent on [illegible] and other business property	
18. Taxes (other than [illegible])	
19. Total (lines 11 to 18)	
20. Net profit (or loss) (line 1 minus [illegible] line 19) (enter as item 6, page 1)	

If the production, manufacture, purchase and sale of merchandise is an income-determining factor, inventories are required. Show "Cost" or "Lower of cost or market" as basis unless other acceptable method was used. Give details as to method used, valuation of inventories

Explanation of deductions claimed in lines 6, 14, and 17

Schedule E—EXPLANATION OF DEDUCTION FOR [illegible] CLAIMED IN [illegible]

1. Kind of property (If additional space is required, attach schedule)	2. Date acquired	3. Cost or other basis as adjusted as of beginning of year	4. Depreciation allowed or allowable in prior years	5. Depreciation allowed or allowable for year	6. Depreciation sustained	7. [illegible]	8. [illegible]
		$	$	$	$		

Joint Exhibit No. D-4

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS

SEE SCHEDULE

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS

SEE SCHEDULE

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS

SEE SCHEDULE

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	2. Net short-term capital gain or loss (enter on line 10 (a), page 1, amount of gain shown in column 3)	3. Net gain or loss (as for long-term amounts from column 10, above)		4. Net gain or loss (as for long-term amounts from column 11, above)		5. Total net gain or loss (as for either amounts in columns 3, 4, and 5 of this summary)	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter on line 10 (a), page 1, amount of gain shown in column 3)	$	$	$ 46 00	$	$	$	$
2. Total net long-term capital gain or loss (enter on line 10 (b), page 1, amount of gain or loss shown in column 3)	$	$	$ 60 00	$	$	$	$ 106 00

COMPUTATION OF ALTERNATIVE TAX

Use only (1) If you had a net long-term capital gain, and item 34, page 1, exceeds $22,000
(2) If you had a net long-term capital loss, and such loss plus item 34, page 1, exceeds $22,000

1. Net income (from 28, page 1). (See Instruction 19)		$ 64,809	24	10. Normal tax (4% of line 9)	$ 2,412
2. (a) Net long-term capital gain (from 10 (b), page 1)		46	00	11. Surtax on line 6. (See Instruction 20)	16,232
(b) Net long-term capital loss (from 10 (b), page 1)				12. Partial tax (line 40 plus line 11)	$ 18,428
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 19)		$ 65,091	24	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
4. Less: Personal exemptions. (From Schedule J-1)	$ 2000 00			(b) 30% of net long-term capital loss (30% of line 2 (b))	144
5. Credit for dependents. (From Schedule J-2)	1266 67	3,266	67	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$ 18,556
6. Balance (Surtax net income)		$ 61,824	57	15. Total normal tax and surtax (from 38, page 1)	$ 18,157
7. Less: Interest on Government obligations, if any. (See Instruction 21)	$			16. Tax liability (if a net long-term capital gain on line 2 (a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 39, page 1)	$ 18,218
8. Earned income credit. (From Schedule K-1 or K-2). (See Inst. 19)	1400 00	1,400	00		
9. Balance subject to normal tax		$ 60,424	57		

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 19)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expenses of sale and cost of improvements (explain on sheet) (see Inst. 5 (b), 1957 Return)	6. Depreciation allowable (see Inst. 5 (b), 1957 Return) or Method 2, 1957 return (explain in Schedule H)	7. Gain or loss (subtract 5 plus 6 from 3 and 4)
		$	$	$	$	$
Total net gain (or loss) (enter as item 38 (a), page 1)						$

State the family, fiduciary, or business relationship in case of any of parents ____ of any of the items on this page ____
If any of such items were acquired by gift, bequest, devise, or inheritance, explain ____ date acquired ____

Joint Exhibit No: D-4

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 14, 15, 16, 17, 18, AND 19

1. Item No.	2. Deductions	3. Amount	1. Item No.	2. Deductions	3. Amount
14	Church Tithe	$	14		$ 1,0
	[illegible] Art				1,0
	University School				
	Eastern Agency				
	[illegible]				
	[illegible]				
	Society for Aid of Hiring				
	[illegible]				

Schedule I.—EXPLANATION OF INCOME (OTHER THAN [illegible]) RECEIVED DURING THE TAXABLE YEAR. (See Instruction 9)

1. Source of Income	2. Nature of Business	3. Amount
		$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 18 AND 19. (See Instructions 18 and 19)

(a) Personal Exemption

Status	Number of persons in family, same to each entry	Credit claimed
Single, or married and not living with husband or wife		$
Married and living with husband or wife		
Head of family (explain below)		

(b) Credit for Dependents

Name of dependent and relationship	Number of months under which [illegible]		Credit claimed
	[illegible]	[illegible]	$

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 20)

(1) If your net income is $14,000 or less, use only this part of schedule.

Net income (item 20, page 1)	$
Earned income credit (10% of net income, above)	

(2) If your net income is more than $14,000, use only this part of schedule.

Earned net income (not more than $14,000)	$ 14,000 00
Net income (item 20, page 1)	14,000 14
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $100)	1,400 00

QUESTIONS

1. State your principal occupation or profession Executive
2. Check whether you are a citizen ☑ or a resident alien ☐.
3. Did you file a return for any prior year? Yes. If so, what was the latest year? 1939. To which Collector's office was it sent? Cleveland.
4. Are items of income or deductions of both husband and wife included in this return? No
5. State (a) Name of husband or wife whose separate return was made, [illegible] H. Williams
   (b) Personal exemption, if any, claimed thereon none
   (c) Collector's office to which it was sent Cleveland
6. Check whether this return was prepared on the cash ☑ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no") Yes (If answer is "yes," attach statement required by Instruction 7.)

AFFIDAVIT. (See Instruction 8)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to by [illegible] H. Williams

before me this 14th day of March, 1941

Merle McNeil
(Signature and title of officer administering oath)

A return made by an agent must be accompanied by power of attorney. (See Instruction 8.)

MERLE McNEIL, Notary Public

My commission expires June 11, 1941

[illegible] H. Williams
(Signature)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

AFFIDAVIT. (See Instruction 8)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 14th day of March, 1941

Merle McNeil
(Signature and title of officer administering oath)

MERLE McNEIL, Notary Public

My commission expires June 11, 1941

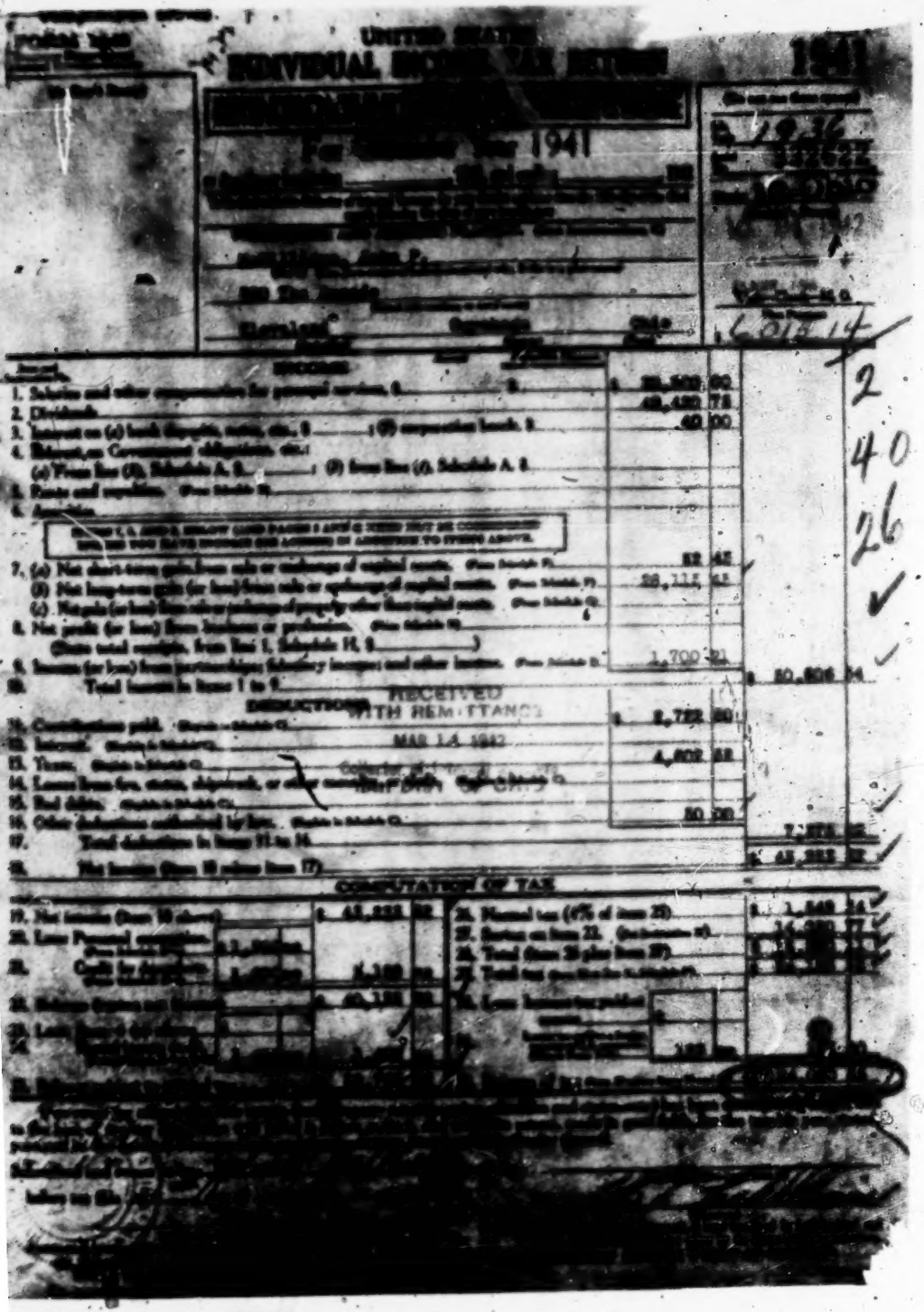
[illegible] L. Hall
(Signature of person preparing the return)

Secy

(Signature of person preparing the return)

(Office or business address)

JOINT EXHIBIT No. E-5


UNITED STATES

INDIVIDUAL INCOME TAX RETURN

1941

For Calendar Year 1941

INCOME

DEDUCTIONS

RECEIVED WITH REMITTANCE

MAR 14 1942

COMPUTATION OF TAX

Joint Exhibit No. E-5

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year (including your proportionate share of such obligations held by estates, trusts, partnerships, clubs, or associations from which received)	3. Interest received or accrued during the year	4. Amount of principal on which interest is to be included in gross income	5. Interest on amounts in column 4, and dividends only, paid for current year
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$	All	
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended			All	
(c) Obligations of United States issued on or before September 1, 1917			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness issued prior to March 1, 1941			All	
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			$5,000	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (g) below) issued prior to March 1, 1941			None	
(g) Dividends on shares accounts in Federal savings and loan associations				
(h) Total (enter on line 4 (a), page 1)				$

(i) Obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 4 (i), page 1)	Amount owned at end of year	Interest received or accrued during the year (subject to ordinary tax only on receipt)
	$	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction E)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (subtract 3, 4, and 5 from 2) (enter on line 5, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, 13, 14, 15, AND 16

1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
		$			$
	See schedule attached			See schedule attached	

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21. (See Instructions 20 and 21)

(1) Personal Exemptions

Status	Number of months during the year in such status	Credit claimed
Single, or married and not living with husband or wife, and not head of family		$
Married and living with husband or wife	12	1,500 00
Head of family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year: Under 19 years old	19 years or over	Credit claimed
Barlow son	12		$ 400 00
Suzanne daughter	12		400 00
Marianne daughter	12		400 00
John, Jr. son	12		400 00

Reason for support if 19 years or over

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is $5,000 or less, you may use this part of schedule

Net income (item 18, page 1)	$	
Earned income credit (10% of net income, above)		

(2) If your net income is more than $5,000, you may use this part of schedule

Earned net income (not more than $14,800)	$	14,000 --
Net income (item 18, page 1)		15,258 58
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $300)		1,400 --

QUESTIONS

1. State your principal occupation or profession: Executive
2. Name and address of employer: The Youngstown Sheet Door Co., 590 The Arcade, Cleveland, O.
3. Did you file a return for any prior year? Yes. If so, what was the latest year? 1950 To which Collector (which was it sold) Cleveland
4. If separate return was made for the current year, state:
   (a) Name of husband or wife: Brooks B. McWilliams
   (b) Principal occupation, if any, claimed thereon: None
   (c) Collector's office to which it was sent: Cleveland
5. Check whether this return was prepared on the cash ☑ or accrual ☐ basis.
6. If return on cash basis, do you elect, under section 42, to include as income received in the current year the increase for accrued and prior years in the redemption price of accumulation-type obligations issued at a discount? ____ If so, attach statement listing obligations covered and computation of the accrued income. Report such increase as interest in item 3 or 4, page 1, whichever applicable.
7. Did you receive during the taxable year any nontaxable income other than interest reported in Schedule A (see Instruction G)? No. If so, attach schedule showing source, nature, and amount of such income.
8. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? Yes. If so, attach statement required by Instruction J.

Joint Exhibit No. E-5

DETACH PAGES 3 AND 4 IF NOT USED

Page 3

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instructions 7).

1. Kind of property (If necessary, attach separate sheet with same heading)	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (Enter also on page 1)	5. Cost or other basis	6. Expense of sale and cost of improvements (Enter also on page 1, Part I, line 2)	7. Depreciation allowed (or allowable) since acquisition (Enter also on page 1, 1951 Column B, Schedule B)	8. Sales or base (subtract col. 7 from col. 5 and col. 6)	Gains or loss to be taken into account: 9. Per cent	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
				See schedule attached				100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	66⅔%	$
								66⅔%	
								66⅔%	
				See schedule attached				66⅔%	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	50	
								50	
				See schedule attached				50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$

SUMMARY OF NET CAPITAL GAINS OR LOSSES

1. Classification	2. Net short-term capital loss (if applicable, enter gain in column 3 of next summary line)	3. Net gain or loss in the column below (amount from column 10, above)		4. Net gain or loss in the column below (amount from combined net short-term and long-term loss)		5. Total net gain or loss in the column below (column 3, 4, and 6 of this summary)	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter on line 7 (a), page 1, amount of gain shown in column 3)	$ 56	$ 99	$ 44	$	$ 9	$ 52	$ 85
2. Total net long-term capital gain or loss (enter on line 7 (b), page 1, amount of gain or loss shown in column 3)	$	$ 28,117	$ 57	$	$ 73	$	$ 26,117

COMPUTATION OF ALTERNATIVE TAX

Use only: If you had a net long-term capital gain, and item 22, page 1, exceeds $13,000, or
If you had a net long-term capital loss, and such loss plus items 22, page 1, exceeds $13,000

1. Net income (line 18, page 1). (See Instruction 7)	$48,273	10. Normal tax (4% of line 9)	$ 2,673
2. (a) Net long-term capital gain (item 7 (b), page 1)		11. Surtax on line 6. (See Instruction 17)	29,945
(b) Net long-term capital loss (item 7 (b), page 1)		12. Partial tax (line 10 plus line 11)	$32,618
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 7)	$	13. (a) 50% of net long-term capital gain (50% of line 2 (a))	
4. Less: Personal exemption. (From Schedule D-1)	$1,500	(b) 50% of net long-term capital loss (50% of line 2 (b))	$
5. Credit for dependents. (From Schedule D-1)	1,000	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$24,186
6. Balance (subtract line 5 from line 4)	$	15. Total income tax and surtax (line 28, page 1)	$15,880
7. Less: (a) Earned income credit. (From Schedule D-1 or D-2). (See Inst. 7)	$	16. Tax on the basis of a net long-term capital gain, see line 2 (a), page 2 (if you have no net capital loss, enter tax on line 14 of this schedule; if you have a net capital loss, enter tax on line 14 or line 15, whichever is the smaller). (Enter on line 29, page 1)	$24,186
(b) Retirement income credit. (From Schedule D-2)	$		
8. Balance subject to normal tax	$		

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 7)

1. Kind of property	2. Date acquired	3. Gross sales price	4. Cost or other basis	5. Expense of sale and cost of improvements (Enter also on page 1, Part I, line 2)	6. Depreciation allowed (or allowable) since acquisition (Enter also on page 1, 1951 Column B, Schedule B)	7. Gain or loss (subtract col. 5 from col. 3 and add col. 6)
		$	$	$	$	$
Total net gain (or loss) (enter on line 7 (c), page 1)						$

Describe briefly, following, or insert on a separate sheet, if method of purchase of any of the items on this page [illegible]
If any of such items were acquired by gift, state how acquired [illegible]

Joint Exhibit No. E-5

Schedule H.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(State (1) nature of business _____ (2) number of places of business _____
and address if different from name and address on page 1. _____

1. Total receipts _____ $ _____

COST OF GOODS SOLD (To be used where inventories are an income-determining factor)			OTHER BUSINESS DEDUCTIONS	
2. Inventory at beginning of year	$		11. Salaries and wages not included as "Labor" (do not deduct amounts claimed for yourself)	$
3. Merchandise bought for sale			12. Interest on business indebtedness	
4. Labor			13. Taxes on business and business property	
5. Material and supplies			14. Losses (explain below)	
6. Other costs (Itemize below)			15. Bad debts arising from sales or services	
7. Total of lines 2 to 6	$		16. Depreciation, obsolescence, and depletion (explain in Schedule J)	
8. Less inventory at end of year			17. Rent, repairs, and other expenses (Itemize below or on separate sheet)	
9. Net cost of goods sold (line 7 minus line 8)	$		18. Total of lines 11 to 17	$
10. Gross profit (line 1 minus line 9)	$		19. Total of lines 9 and 18	$
			20. Net profit (or loss) (line 1 minus line 19) (entry as line 3, page 1)	$

If the production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "C" or "C or M" on line 2 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17 _____

Schedule I.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION 9 AND GIVE NAMES AND ADDRESSES)

Fort Dickinson, Clifton Forge, Virginia. (Farm)	$		
Owned jointly with John A. Haddan,			
1668 Union Commerce Bldg., Cleveland, Ohio.	1,700	21	$ 1,700 21

INCOME FROM FIDUCIARIES (GIVE NAMES AND ADDRESSES)

	$		

INCOME FROM OTHER SOURCES (STATE NATURE)

	$		

Total amounts in Schedule I. (Enter on line 9, page 1) $ 1,700 21

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable items)	4. Amount fully depreciated prior to use in trade or business this year	5. Depreciation allowed or allowable in other years	6. Remaining cost or other basis to be recovered	7. Estimated life remaining (in years)	8. Estimated salvage value	9. Depreciation allowable this year
		$	$	$	$			$

AFFIDAVIT. (See Instruction 11)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 26th day of February, 1942.

Merle McNab
(Signature and title of officer administering oath)

Bruce L. Hall
(Signature of person preparing the return)

(Signature of person signing the return)

(Address of firm or employer, if any)

MERLE McNAB, Notary Public
My commission expires June 1 1944

SCHEDULE "D" GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS.

LONG-TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD FOR MORE THAN SIX MONTHS AND NOT MORE THAN EIGHTEEN MONTHS.

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sale	Gain or Loss	%	Gain or Loss
300 Intern.Nickel of Can.	10-25-39	7-8-41	7,829.85	12,201.00	30.00	[illegible]	-	[illegible]
200 Parke Davis	7-12-39	7-8-41	8,279.92	12,720.60	20.00	[illegible]	-	[illegible]
200 Eastman Kodak	9/20-10/25-39	7-8-41	26,809.38	32,107.50	20.00	[illegible]	-	[illegible]
500 General Electric	9/22-10/26-39	7-8-41	16,066.17	20,785.00	50.00	[illegible]	-	[illegible]
200 Intern. Nickel	9-22-39	7-8-41	8,244.89	7,762.25	20.00	[illegible]	-	[illegible]
100 Monsanto Chem.com.	10-17-39	7-8-41	8,278.85	10,698.25	4.60	[illegible]	-	[illegible]
200 North American	10-17-39	7-8-41	2,871.70	4,295.00	7.00	[illegible]	-	[illegible]

LONG TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD FOR MORE THAN EIGHTEEN MONTHS

1-M Anaconda 4½% '50	7-18-38	8-11-41	1,010.00	1,057.82	-	[illegible]	[illegible]	[illegible]
100 Cerro dePasco	10-14-38	12-10-41	2,589.44	5,780.50	10.00	[illegible]	-	[illegible]
200 General Electric	10-14-38	12-10-41	8,007.78	9,784.90	20.00	[illegible]	-	[illegible]
200 Intern. Nickel	7 and 10'38	12-10-41	4,869.90	10,460.50	20.00	[illegible]	-	[illegible]
300 North American	9-15-37	12-10-41	8,022.93	8,687.71	10.50	[illegible]	-	[illegible]
100 Westinghouse E & M.	8-2-38	12-10-41	7,267.55	10,277.00	7.00	[illegible]	-	[illegible]
10 Kirtland Club	10-4-29	Nov. '41	49.80	1,000.00	-	[illegible]	-	[illegible]

SHORT TERM CAPITAL GAINS AND LOSSES -- ASSETS HELD FOR MORE THAN SIX MONTHS

6 Detroit Edison	12/31/41	12/31/41	98.46	-	-	98.46	100	98.46

John P. McWilliams,
900 The Arcade,
Cleveland, Ohio.

Joint Exhibit No. E-5

SCHEDULE "C"

Explanation of Deductions Claimed in Items 11, 13 and 17.

Item 11—Contributions.

Red Cross	$ 310.00
Cleveland Community Fund	1,200.00
British War Relief	10.00
Church of the Covenant	850.00
Museum of Art	10.00
Occidental College	62.50
Western Reserve	150.00
Princeton University	50.00
American Field Service	5.00
United Service Organizations	50.00
Ducks, Unlimited	10.00
Cleveland Hostels	10.00
Boystown	5.00
Total	$2,722.50

Item 13—Taxes

Personal Property	$1,997.56
Real Estate—South Park Res.	1,881.76
Mentor Ranch-house	47.74
Safety deposit box	5.50
Gasolene (3 cars)	75.00
Auto Licenses	48.00
Club Dues	98.60
Stock Sales	229.10
Sales Tax—general	150.00
Sales Tax—New car	69.26
Total	$4,602.52

Item 17—Safety Deposit Box—National City Bank $50.00

STIPULATION No. 5946

(Filed at Hearing April 19, 1945)

THE TAX COURT OF THE UNITED STATES

ESTATE OF SUSAN P. McWILLIAMS, DECEASED, JOHN P. McWILLIAMS, *Petitioner*,	Docket No. 5946
vs.	
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts are true and may be received and considered as being in evidence, subject, however, to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. The petitioner is the Estate of Susan P. McWilliams, deceased. John P. McWilliams is the duly appointed and acting executor, whose place of business during the taxable year in question herein was 590 The Arcade, Cleveland, Ohio. The taxes in controversy are income taxes for the taxable year ended December 31, 1940, in the amount of $296.75. Notice of Deficiency was mailed by the Commissioner on June 6, 1944.

2. In computing said deficiency for the year ended December 31, 1940, the Commissioner disallowed a long-term capital loss claimed by the decedent amounting to $1,755.79 for the year ended December 31, 1940, reported by the decedent arising out of the sale of the following capital assets:

100 shares of Eastman Kodak Co.

3. The aforesaid capital loss claimed by decedent was disallowed by the Commissioner upon the ground that it was not allowable under the provisions of Section 24(b) of the Internal Revenue Code.

4. The securities listed in paragraph 2 herein were sold pursuant to orders given for the sale of these stocks to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange

in the regular manner by Clark, Dodge & Company, members of the New York Stock Exchange and correspondents to said Curtiss-House & Company. Said securities had been acquired and held by decedent more than eighteen months prior to their sale and were purchased by persons undisclosed to and unknown to decedent at the time of sale.

5. At the time that orders were placed for the sale of the above listed securities, orders were given by John P. McWilliams, her son, to Curtiss-House & Company, to purchase stock of the same company at approximately the same price for John P. McWilliams. Said orders were duly executed by the purchase of stock of the same company represented by certificates bearing different numbers than those sold by decedent; these purchase orders were executed in the regular manner on the New York Stock Exchange by Clark, Dodge & Company, the aforesaid correspondents of Curtiss-House & Company. The securities sold and purchased by decedent and John P. McWilliams, respectively, are set forth in the schedule attached hereto, together with other pertinent data, and marked "Joint Exhibit A-1".

6. It is further stipulated and agreed that photostatic copies of the customers' accounts carried on the books of Curtiss-House & Company in the names of Susan P. McWilliams and John P. McWilliams, which are attached hereto, are true and correct copies of said book accounts and may be received in evidence as "Joint Exhibits B-2" and "C-3".

7. Photostatic copy of the income tax return of Susan P. McWilliams for the year ended December 31, 1940, which is attached hereto, may be received in evidence as "Joint Exhibit D-4".

JOHN A. HADDEN,
Counsel for Petitioner.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

JOINT EXHIBIT No. A-1

Date	No.	Stock	Price	Broker buying or selling stock	Certificate Number
1940		Susan P. McWilliams sold:			
11-28	100	Eastman Kodak Co.	140½	Neuhut, Plohn & Co.	N 56648
		John P. McWilliams bought:			
11-28	100	Eastman Kodak Co.	140½	Tucker Anthony & Co.	N 58817

FOR NOV 1940 YEAR

DATE	FOLIO	BOUGHT OR RECD	SECURITIES	PRICE	DEBIT	DATE	FOLIO	SOLD OR DELIVD	SECURITIES	PRICE	CREDIT	BALANCE
NOV 28		100	EASTMAN KODAK	RECD								
NOV 30			BALANCE	LONG								
		100	EASTMAN KODAK									

DUPLICATE STATEMENT

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JOINT EXHIBIT No. B-2

IN ACCOUNT WITH CURTISS, HOUSE & CO. MRS SUSAN P MC WILLIAMS

FOR DEC 1940 YEAR

DATE	FOLIO	BOUGHT OR RECD	SECURITIES	PRICE	DEBIT	DATE	FOLIO	SOLD OR DELIVD	SECURITIES	PRICE	CREDIT	BALANCE
NOV 30			BALANCE	LONG								
		100	EASTMAN KODAK									
DEC 2	NC		CHE CK ON A/C		14012 45	DEC 2	CD	100	EASTMAN KODAK	140½	14012 45	0 00

DUPLICATE STATEMENT

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Joint Exhibit No. B-

JOINT EXHIBIT No. C-3

In re: Estate of Susan P. McWilliams, Deceased, John P. McWilliams, Executor, Docket No. 5946.

Joint Exhibit C-3 is the same as Joint Exhibit B-2 in Docket No. 5945 which is incorporated herein by reference.

JOINT EXHIBIT No. D-4

FORM 1040

UNITED STATES
INDIVIDUAL INCOME AND DEFENSE TAX RETURN 1940

(Auditor's Stamp)

FOR GROSS INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning 1-1, 1940, and ended 12-31-40, 19__

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instructions C)

McWilliams, Susan P.
(Name) (If joint return, give names of both husband and wife. If this is a joint return)

520 The Arcade
(Street and number, or rural route)

Cleveland (Post office) Cuyahoga (County) Ohio (State)

(Do not use this space)
Ex. 1938
No. 822196
(Cashier's Stamp)
Cash—Check—M.O.
First Payment $

NOT INVESTIGATED

INCOME

1. Salaries and other compensation for personal services. (From Schedule A)	$ 17,681	02
2. Dividends	522	76
3. Interest on bank deposits, notes, mortgages, etc.	5,915	19
4. Interest on corporation bonds		
5. Taxable interest on Government obligations, etc. (From Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Furnish names and addresses)		
7. Income from fiduciaries. (Furnish names and addresses)		
8. Rents and royalties. (From Schedule C)		
9. Income (or loss) from business or profession. (From Schedule D)		
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F) 873.33		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)	120	77
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)		
11. Other income (including income from annuities). (State source)		
12. Total income in items 1 to 11. (Enter corresponding income in Schedule I)		$ 24,279 74

DEDUCTIONS

13. Contributions paid. (Explain in Schedule H)	$ 240	00
14. Interest. (Explain in Schedule H)		
15. Taxes. (Explain in Schedule H)	1,163	59
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule H)		
17. Bad debts. (Explain in Schedule H)		
18. Other deductions authorized by law. (Explain in Schedule H)		
19. Total deductions in items 13 to 18.		1,503 59
20. Net income (item 12 minus item 19)		$ 22,776 15

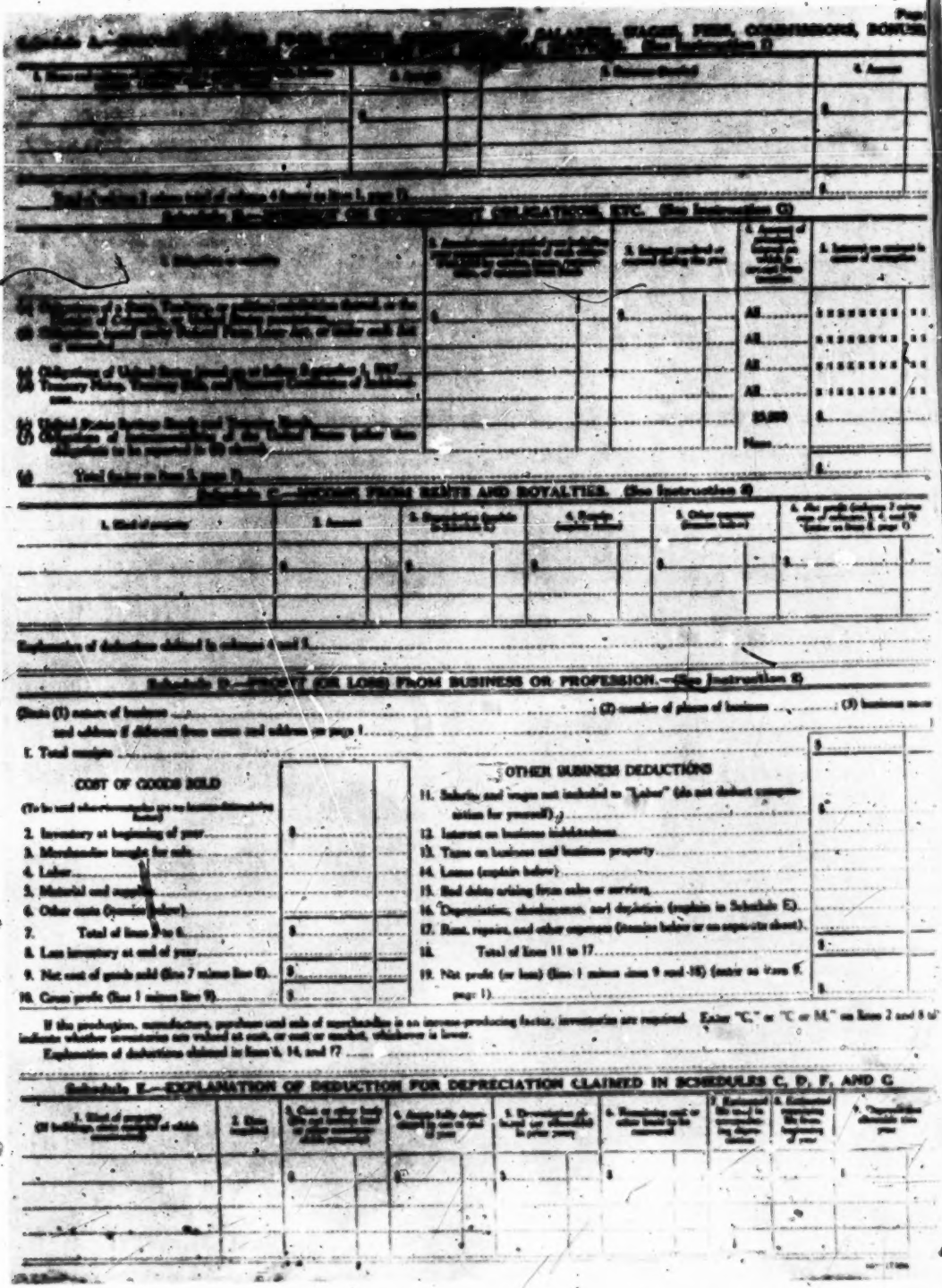
COMPUTATION OF TAX

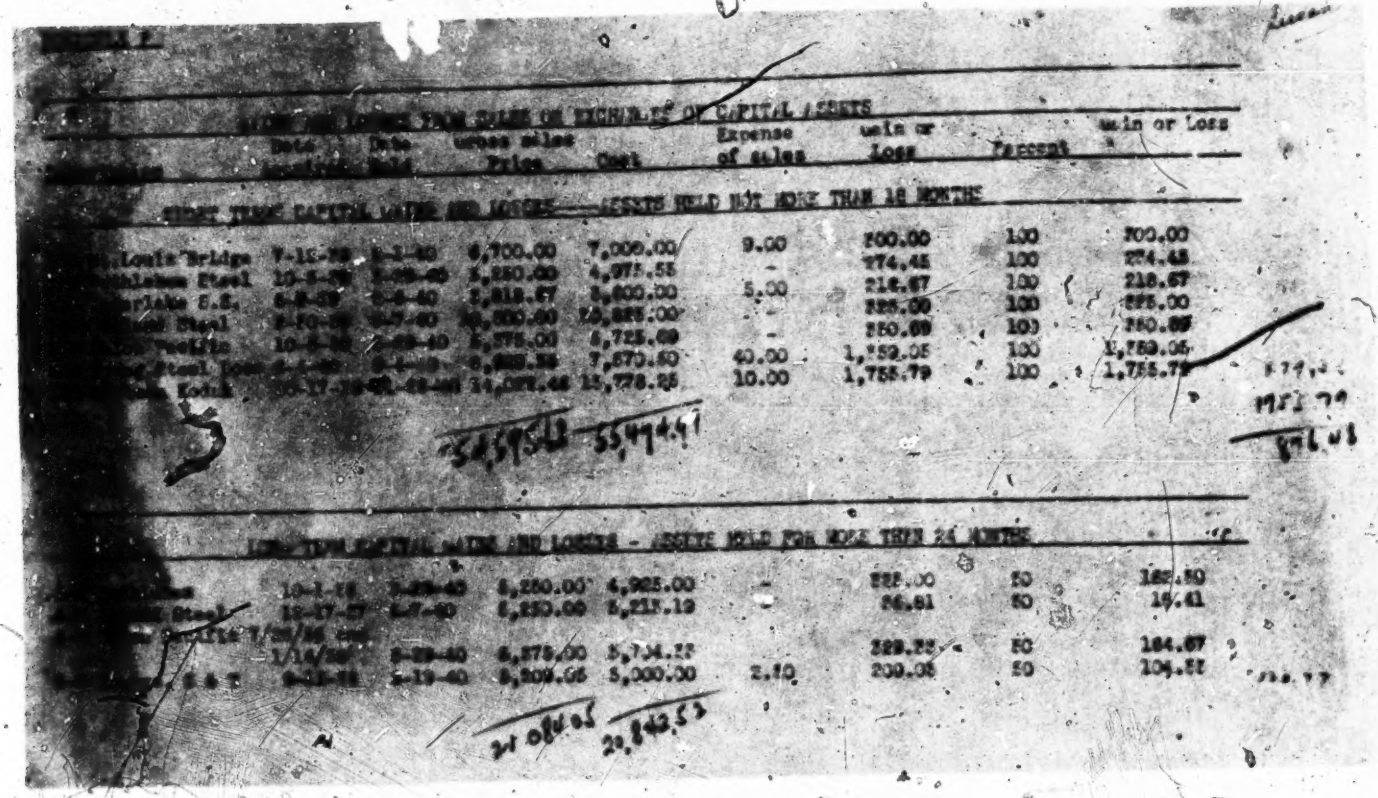
21. Net income (item 20 above)		$ 22,776	15		
22. Less: Personal exemption. (From Schedule J-1)	$ 800	00			
23. Credit for dependents. (From Schedule J-2)			800	00	
24. Balance (surtax net income)			$ 21,976	15	
25. Less: Interest on Government obligations, etc. (See Instruction 25)	$				
26. Earned income credit. (From Schedule K-1 or K-2)	800	00	800	00	
27. Balance subject to normal tax			$ 21,676	15	

28. Normal tax (4% of item 27)	$ 867	05
29. Surtax on item 24. (See Instruction 29)	2,354	28
30. Total (item 28 plus item 29)	$ 3,221	33
31. Total income tax (item 30, or if you had a net long-term capital gain or loss, enter item 31, Schedule P)	$ 3,221	33
32. Less: Income tax paid at source $ 23 10		
33. Income tax paid to a foreign country or U. S. possession (Attach Form 1116) 27 50	43	60
34. Balance of income tax (item 31 minus items 32 and 33)	$ 3,177	73
35. Defense tax (10% of item 34). (See Instruction 35)	317	78
36. Total income and defense taxes due (item 34 plus item 35)	$ 3,495	51

NOTE.—In order that this return may be considered [illegible] Supplements of the Internal Revenue Code, the data called for herein must be set forth [illegible]

Joint Exhibit No. D-4





SCHEDULE D

SHORT-TERM CAPITAL GAINS AND LOSSES — ASSETS HELD NOT MORE THAN 18 MONTHS

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sales	Gain or Loss	Percent	Gain or Loss
...Louis Bridge	7-15-39	8-2-40	6,700.00	7,000.00	9.00	300.00	100	300.00
...hlehem Steel	10-5-39	8-28-40	4,250.00	4,975.55	-	274.45	100	274.45
...rfolk S.S.	8-8-39	8-8-40	3,818.67	3,600.00	5.00	218.67	100	218.67
...el Steel	8-10-39	8-27-40	26,000.00	25,825.00	-	175.00	100	175.00
...Textile	10-2-39	7-29-40	3,375.00	3,725.89	-	350.89	100	350.89
...Steel Corp.	8-1-40	8-1-40	8,869.34	7,670.50	40.00	1,159.05	100	1,159.05
...Ford	10-17-39	8-28-40	14,022.46	15,778.25	10.00	1,755.79	100	1,755.79

LONG-TERM CAPITAL GAINS AND LOSSES - ASSETS HELD FOR MORE THAN 18 MONTHS

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sales	Gain or Loss	Percent	Gain or Loss
...ines	10-1-38	8-28-40	5,250.00	4,925.00	-	325.00	50	162.50
...el Steel	12-17-37	8-7-40	5,250.00	5,218.19	-	31.81	50	15.41
...Textile 7/25/36 ...ed 1/14/38		8-28-40	6,275.00	5,704.33		329.33	50	164.67
... & T	9-21-38	8-19-40	5,209.05	5,000.00	2.10	209.05	50	104.52

Joint Exhibit No. D-4

1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (see instr. 4 of Part I)	5. Cost or other basis	6. Expense of sale and cost of improvements and expenditures since acquired (see instr. 5 of Part I)	7. Depreciation allowed (or allowable) since acquisition (see instr. 6 of Part I)	8. Gain or loss (Subtract 7 from sum of 5 and 6)	Gain or loss to be reported on Schedule D (Form 1040) 9. Term	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 12 MONTHS									
			$	$	$	$	$	100	$
			SEE SCHEDULE					100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 12 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	60%	$
			SEE SCHEDULE					60%	
								60%	
								60%	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	50	
			SEE SCHEDULE					50	
								50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	2. Net short-term capital gain or loss (if gain, include that gain in column 3 of net income for ... 's return)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from recomputation and "minimum trust"		5. Total net gain or loss to be taken into account in column 2, 3, and 4 of this summary	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter as item 10 (c), page 1, amount of gain shown in column 3)	$	$	$ 873	$	$	$	(Do not enter here. See instruction 10)
2. Total net long-term capital gain or loss (enter as item 10 (f), page 1, amount of gain or loss shown in column 3)	$ 120 77	$	$	$	$	$ 120 77	$

COMPUTATION OF ALTERNATIVE TAX

Use only (1) If you had a net long-term capital gain, and item 24, page 1, exceeds $22,000
(2) If you had a net long-term capital loss, and such loss plus item 24, page 1, exceeds $22,000

1. Net income (item 28, page 1). (See Instruction 10)	$	10. Normal tax (4% of line 9)	$
2. (a) Net long-term capital gain (item 10 (f), page 1)		11. Enter on line 6 (See Instruction 20)	
(b) Net long-term capital loss (item 10 (f), page 1)		12. Partial tax (line 10 plus line 11)	$
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 10)	$	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
4. Less: Personal exemption. (From Schedule J-1)	$	(b) 30% of net long-term capital loss (30% of line 2 (b))	
5. Credit for dependents. (From Schedule J-2)	$	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	
6. Balance (carries net income)	$	15. Total normal tax and surtax (item 30, page 1)	$
7. Less: Interest on Government obligations, etc. (See Instruction 20)	$	16. Tax liability (if a net long-term capital gain, see line 7 (a), enter line 14 or line 15, whichever is the smaller; if a net long-term capital loss, see line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 31, page 1)	$
8. Earned income credit. (From Schedule K-1 or K-2). (See Inst. 19)	$		
9. Balance subject to normal tax	$		

Schedule C.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 19)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expenses of sale and cost of improvements and expenditures since acquisition	6. Depreciation allowed (or allowable) since acquisition (see instr. 6 of Part I, Schedule D)	7. Gain or loss (subtract 6 plus sum of 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 29 (c), page 1)						$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page.
If any of such items were acquired by you other than by purchase, explain fully how acquired.

Joint Exhibit No. D-4

11	Cleveland Community Fund	$ 500	00	16
	The Seeing Eye	300	00	
	Relief	10	00	
	Calvary Church	5	00	
	Assn. for Crippled	5	00	
	Red Cross	10	00	

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B.

1. Source of income	2. Nature of income	3. Amount

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 24. (See Instructions 23 and 25)

(1) Personal Exemption

Status	Number of months during the year in each status	Credit claimed
gle, or married and not living with husband or wife	12	$ 800 00
arried and living with husband or wife		
ad of family (explain below)		

(2) Credit for Dependents

Name of dependent (not children)	Number of months during year in home		Credit claimed
	Under 18 years	Over 18 years	
			$

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is $5,000 or less, use only this part of Schedule K.

t income (item 20, page 1)	$	
rned income credit (10% of net income, above)		

(2) If your net income is more than $5,000, use only this part of Schedule K.

Earned net income (not more than $14,800)	$ 22,776	15
Net income (item 20, page 1)		
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $400)	300	00

QUESTIONS

State your principal occupation or profession Housewife

Check whether you are a citizen ☒ or a resident alien ☐.

Did you file a return for any prior year? Yes. If so, what was the latest year? 1940. To which Collector's office was it sent? Cleveland, Ohio

Are items of income or deductions of both husband and wife included in this return?

State (a) Name of husband or wife if separate return was made

(b) Personal exemption, if any, claimed therein

(c) Collector's office to which it was sent

6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.

7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no") Yes (If answer is "yes," attach statement required by Instruction 7.)

AFFIDAVIT. (See Instruction 8)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

x Susan P. McWilliams
(Signature) (See Instruction 8)

Subscribed and sworn to by Susan P. McWilliams

before me this 12th day of March, 1941

Merle McNab
(Signature and title of officer administering oath)

A notary seal is not required but should be affixed if one exists.

MERLE McNAB, Notary Public
My commission expires June 11, 1941

(Signature)
(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

AFFIDAVIT. (See Instruction 8)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Susan P. McWilliams
(Signature of person preparing the return)

(Signature of person preparing the return)

(Address of firm or employer, if any)

Subscribed and sworn to before me this 12th day of March, 1941

Merle McNab
(Signature and title of officer administering oath)

MERLE McNAB, Notary Public
My commission expires June 11, 1941

STIPULATION No. 5947

(Filed at Hearing April 19, 1945)

THE TAX COURT OF THE UNITED STATES

BROOKS B. McWILLIAMS, *Petitioner,*		
vs.		Docket No. 5947
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*		

It is hereby stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts are true and may be received and considered as being in evidence, subject, however, to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. The petitioner, Brooks B. McWilliams, is an individual whose address during the taxable years in question herein was 19100 South Park Boulevard, Cleveland, Ohio. The taxes in controversy are income taxes for the taxable year ended December 31, 1940, in the amount of $1,845.52 and for the year ended December 31, 1941, in the amount of $4,184.07. Notice of Deficiency was mailed by the Commissioner on June 6, 1944.

2. In computing said deficiencies for the years ended December 31, 1940 and December 31, 1941, the Commissioner disallowed long-term capital losses claimed by the taxpayer, amounting to $5,592.49 for the year ended December 31, 1940 and to $13,946.95 for the year ended December 31, 1941, reported by the taxpayer arising out of the sale of the following capital assets:

1940

300 shares of General Electric
100 shares of Standard Oil Company of N. J.
200 shares of International Nickel Co. of Canada, Ltd.

1941

1000 shares of Basic Refractories, Inc.
300 shares of Libby-Owens-Ford Glass Co.

100 shares of E. I. DuPont deNemours Co.
200 shares of General Motors Corporation
100 Shares of American Tel. & Tel. Co.
200 shares of Liggett & Myers Tobacco Co.

3. The aforesaid capital losses claimed by the taxpayer were disallowed by the Commissioner upon the ground that they were not allowable under the provisions of Section 24(b) of the Internal Revenue Code.

4. All of the securities listed in paragraph 2 herein were sold pursuant to orders given for the sale of these stocks to Curtiss-House & Company, stockbrokers in Cleveland, Ohio, and were executed on the New York Stock Exchange in the regular manner by Clarke, Dodge & Company, members of the New York Stock Exchange and correspondents to said Curtiss-House & Company. Said securities had been acquired and held by the taxpayer more than eighteen months prior to their sale and were purchased by persons undisclosed to and unknown to the taxpayer at the time of sale.

5. At the time that orders were placed for the sale of the above-listed securities, orders were given by her husband, John P. McWilliams, to Curtiss-House & Company to purchase stock of the same companies at approximately the same prices for John P. McWilliams. Said orders were duly executed by the purchase of stock of the same companies represented by certificates bearing different numbers than those sold by the taxpayer; these purchase orders were executed in the regular manner on the New York Stock Exchange by Clarke, Dodge & Company, the aforesaid correspondents of Curtiss-House & Company. The securities sold and purchased by the taxpayer and her husband, respectively, are set forth in the schedule attached hereto, together with other pertinent data, and marked "Joint Exhibit A-1".

6. It is further stipulated and agreed that photostatic copies of the customers' accounts carried on the books of Curtiss-House & Company in the names of Brooks B. McWilliams and John P. McWilliams, which are attached hereto, are true and correct copies of said book accounts

and may be received in evidence as "Joint Exhibits B-2" and "C-3".

7. Photostatic copies of the income tax returns of Brooks B. McWilliams for the years ended December 31, 1940 and 1941, which are attached hereto, may be received in evidence as "Joint Exhibits D-4" and "E-5".

JOHN A. HADDEN,
Counsel for Petitioner.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

JOINT EXHIBIT No. A-1

Docket No. 5947

JOINT EXHIBIT A-1

Date	No. of Shares	Stock	Price*	Broker buying or selling stock	Certificate Numbers
1940		Brooks B. McWilliams Sold:			
11-27	200	General Electric	32-3/4	Mitchell, Hutchins & Co.	(691-950 (691-951
"	100	" "	32-5/8	E. F. Hutton & Co.	712-622
		John P. McWilliams Bought:			
11-27	200	General Electric	32-3/4	Fuller Rodney & Co.	(798-061 (798-062
"	100	" "	32-5/8	Jackson & Curtiss	798-063
		Brooks B. McWilliams Sold;			
11-27	100	Standard Oil of N.J.	34-1/4	Maynard Oakley & Lawrence	B-499-550
		John P. McWilliams Bought:			
11-27	100	Standard Oil of N.J.	34-1/4	Eastman, Dillon & Co.	B-569-080
		Brooks B. McWilliams Sold;			
11-27	200	International Nickel of Canada, Ltd.	25-1/4	E. F. Hutton & Co.	NA 313-021 NA 317-469
		John P. McWilliams Bought:			
11-27	100	International Nickel of Canada, Ltd.	25-1/4	Fenner & Beane	NA 393-791
"	"	" "	25-1/4	G.M.P.Murphy	NA 393-792

* The amount received by taxpayer in each instance was the price indicated less commissions and taxes. The amount paid by J. P. McWilliams in each instance was the price plus commissions and taxes.

Joint Exhibit No. A-1

Docket No. 5947

JOINT EXHIBIT A-1, cont'd.

Date	No. of Shares	Stock	Price	Broker buying or selling stock	Certificate Numbers
1941					
			Brooks B. McWilliams sold:		
7-9	100	Basic Refractories	7-1/4	Jackson & Curtis	
7-10	200	" "	7-1/4	Clark, Dodge & Co.	
7-14	200	" "	7-1/2	Fenner & Beane	1496
7-14	100	" "	7-3/8	" "	to
7-22	100	" "	7-1/2	" "	1505 in
7-22	100	" "	7-1/2	Bear, Stearns & Co.	
			7-5/8	Hallgarten & Co.	
			J. B. McWilliams bought:		
7-9	100	Basic Refractories	7-1/4	J.H.Brooks & Co.	
7-10	100	" "	7-1/4	Parrish & Co.	
7-10	100	" "	7-1/4	Reich & Co.	
7-14	100	Basic Refractories	7-1/2	Andrews, Desner & Rothschild	2204 to 2211,
7-14	100	" "	7-1/2	A. M. Kidder & Co.	
7-14	200	" "	7-3/8	Goodbody & Co.	
7-14	100	" "	7-1/2	Parrish & Co.	
7-22	100	" "	7-1/2	Parrish & Co.	2216
7-22	100	" "	7-5/8	Goodbody & Co.	2217
			Brooks B. McWilliams sold:		
7-3	100	Libby Owens Ford	28	Carlisle Mellick & Co.	N 56-227
7-3	100	" " "	28-1/8	Thomson & McKinnon	N 56-228
7-3	100	" " "	28-3/8	Dominick & Dominick	N 56-229
			J. B. McWilliams bought:		
7-3	100	Libby Owens Ford	28	Ira Haupt & Co.	N 61-327
7-3	100	" " "	28-1/8	White Weld & Co.	N 61-328
7-3	100	" " "	28-3/8	Ira Haupt & Co.	N 61-329
			Brooks B. McWilliams sold:		
7-3	100	E.I.DuPont deNemours	154-3/4	Tucker Anthony & Co.	F 218-18
			John B. McWilliams bought		
7-3	100	E.I.DuPont deNemours	154-3/4	Hay Foles & Co.	F 218-13

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Joint Exhibit No. A-1

Docket No. 5947

JOINT EXHIBIT A-1,cont'd.

Date	No. of Sh.	Stock	Price	Broker buying or selling stock	Certificate numbers
1941			Brooks B. McWilliams sold:		
[illegible]	100	General Motors	37-3/4	Abraham & Co.	D 606-713
	100	" "	37-3/4	Burr Cohen & Co.	D 606-714
			J. P. McWilliams bought:		
[illegible]	100	General Motors	37-3/4	Laird & Co.	D 667-209
	100	" "	37-3/4	Baker, Weeks & Harden	D 667-210
			Brooks B. McWilliams sold:		
10	100	American T & T	132-3/4	F. P. Ristine & Co.	G 129-828
			J. P. McWilliams bought:		
10	100	American T & T	132-3/4	F. P. Ristine & Co.	G 147-240
			Brooks B. McWilliams sold:		
10	200	Liggett & Myers	68	Adler Coleman & Co.	D101-151 D101-544
			J. P. McWilliams bought:		
[illegible]	200	Liggett & Myers	68	Eastman Dillon & Co.	D 106-766 D 106-767

The amount received by taxpayer in each instance was the price indicated less commissions and taxes. The amount paid by John P. McWilliams in each instance was the price plus commissions and taxes.

JOINT EXHIBIT No. B-2

IN ACCOUNT WITH CURTISS, HOUSE & CO.

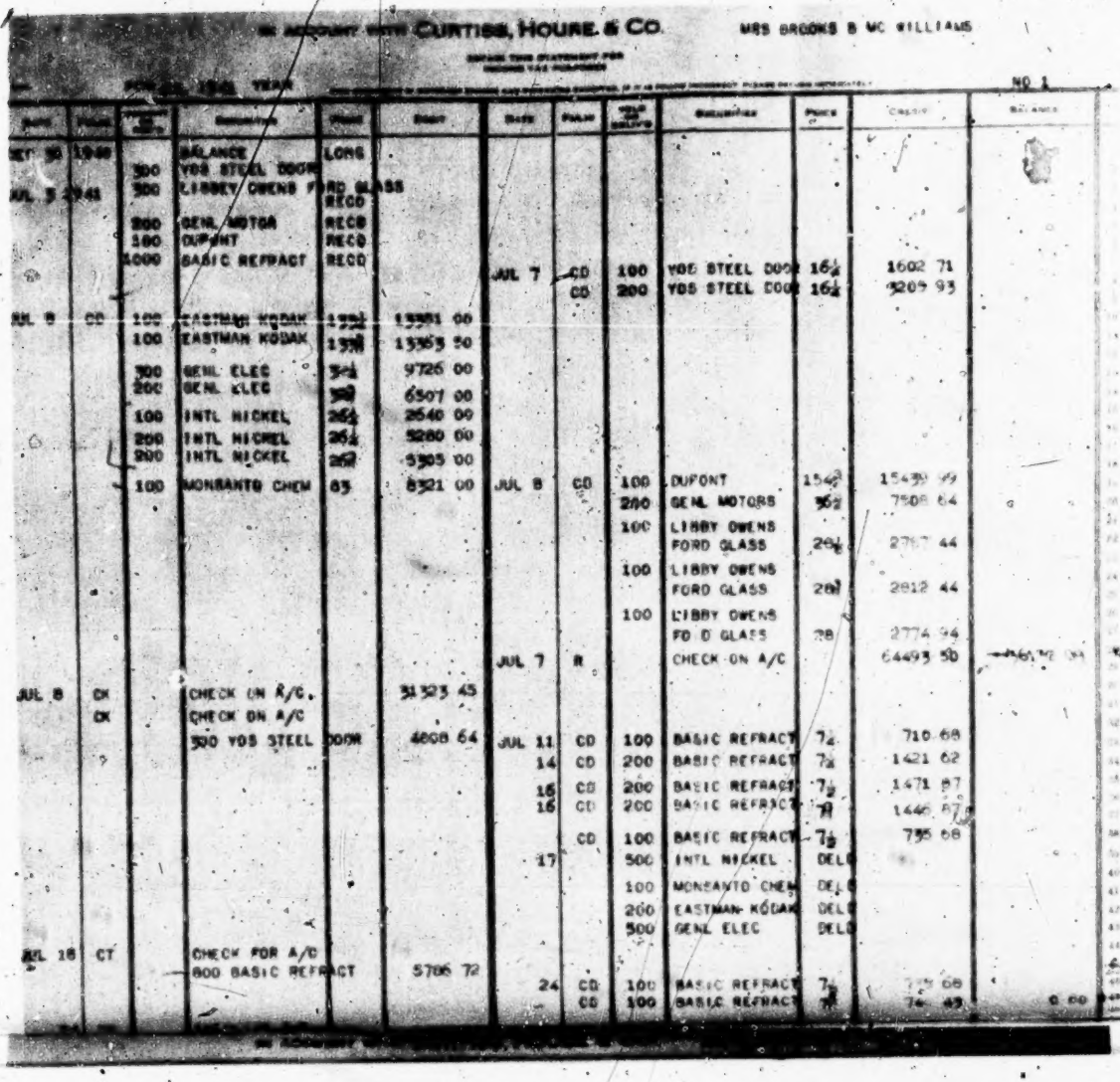
FOR NOV 1940 YEAR

DATE	PAGE	AMOUNT OF RECD	SECURITIES	PRICE	DEBIT	DATE	PAGE	AMOUNT OF DELIV	DESCRIPTION	PRICE	CREDIT	BALANCE
OCT 31			BALANCE	LONG								
		10M	YOS S & T 48/61									
		300	YOS STEEL DOOR									
						NOV 1	CD	100	YOS STEEL DOOR 20¼		1999 95	
							CD	200	YOS STEEL DOOR 20¼		3999 66	
						6	CD	200	YOS STEEL DOOR 20¼		3999 66	
NOV 7	NC		CHECK ON A/C		9999 27	NOV 12	CD	100	YOS STEEL DOOR 20¼		1999 70	
							CD	100	YOS STEEL DOOR 20¼		1999 95	
							CD	100	YOS STEEL DOOR 20¼		2024 98	
							CD	100	YOS STEEL DOOR 20¼		2024 98	
		10M	YOS S & T 3½/1/1/60									
			—O—									
			A/C PURCH AT 103									
				RECD								
	J		A/C 10M YOS S & T									
			3½/60-0 AT 103		10307 22							
		1000	YOS STEEL DOOR	RECD								
	CT		CHECK ON A/C		129 45	NOV 9		10M	YOS S & T 48/61			
									—C— DEL			
							R		CHECK ON A/C			
									REDEMP OF 10M			
									YOS S & T 48/61		10436 67	
						13	CD	200	YOS STEEL DOOR 20¼		4099 91	
							CD	100	YOS STEEL DOOR 20¼		2049 70	
			CHECK ON A/C									
			700 YOS STEEL	DOOR	14199 16							0 00
						NOV 12		10M	YOS S & T 1ST			
									MTGE 3½/60-0	DEL		
						29	CD	200	GEN ELEC	32½	6497 61	
							CD	100	GEN ELEC	32⅝	3236 43	
							CD	200	INTL NICKEL	25¼	4999 89	
							CD	100	SO OF N J	34⅛	3403 43	
NOV 28		10M	COM OF CANADA 3½/67	RECD								
		10M	NICKEL PLATE 4/65	RECD								
		200	INTL NICKEL	RECD								
		100	SO OF N J	RECD								
		100	GENL ELEC	RECD								
	29	NC	CHECK ON A/C									
			500 GENL ELEC									
			100 SO OF N J									
			200 INTL NICKEL		18127 36							

Joint Exhibit No. B-2

NO 2

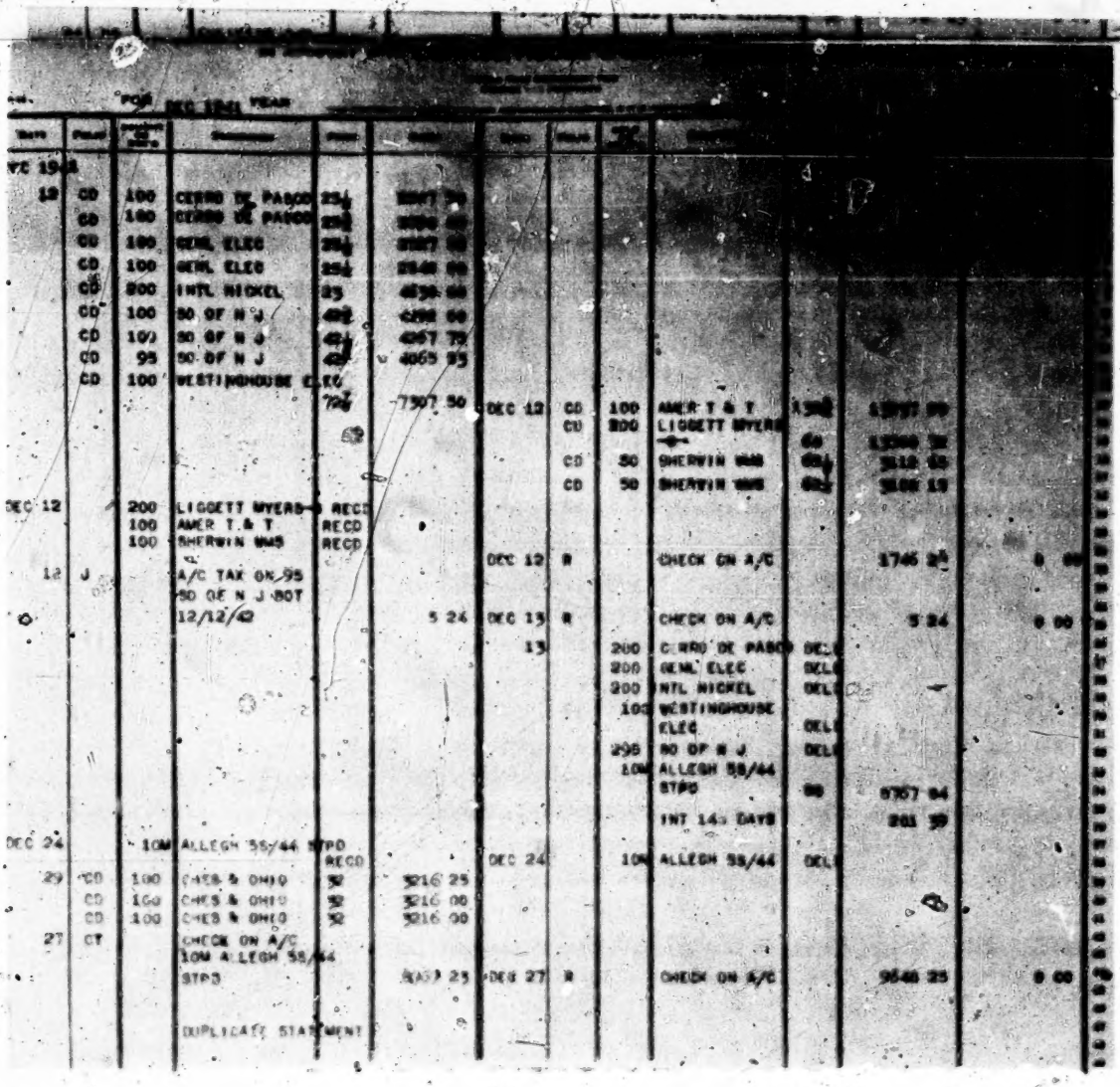
DUPLICATE STATEMENT



MR ACCOUNT WITH CURTISS, HOURE & CO. MRS BROOKS B MC WILLIAMS

FOR THE YEAR NO 1

DATE	PAGE	QUANTITY	DESCRIPTION	PRICE	AMOUNT	DATE	PAGE	QUANTITY	DESCRIPTION	PRICE	CREDIT	BALANCE
ET 30	1940		BALANCE	LONG								
		300	YOS STEEL DOOR									
UL 3	1941	500	LIBBY OWENS FORD GLASS	RECD								
		200	GENL MOTORS	RECD								
		100	DUPONT	RECD								
		1000	BASIC REFRACT	RECD		JUL 7	CD	100	YOS STEEL DOOR	16¼	1602 71	
							CD	200	YOS STEEL DOOR	16¼	3209 93	
UL 9	CD	100	EASTMAN KODAK	1938	15381 00							
		100	EASTMAN KODAK	1938	15365 50							
		300	GENL ELEC	34½	9726 00							
		200	GENL ELEC	32½	6507 00							
		100	INTL NICKEL	26½	2640 00							
		200	INTL NICKEL	26½	5280 00							
		200	INTL NICKEL	26½	5305 00							
		100	MONSANTO CHEM	83	8321 00	JUL 8	CD	100	DUPONT	154	15439 69	
								200	GENL MOTORS	36½	7508 64	
								100	LIBBY OWENS FORD GLASS	28½	2767 44	
								100	LIBBY OWENS FORD GLASS	28½	2812 44	
								100	LIBBY OWENS FD D GLASS	28	2774 94	
						JUL 7	R		CHECK ON A/C		64493 50	[illegible]
JUL 8	CK		CHECK ON A/C.		31323 45							
	CK		CHECK ON A/C									
			300 YOS STEEL DOOR		4608 64	JUL 11	CD	100	BASIC REFRACT	7½	710 68	
						14	CD	200	BASIC REFRACT	7½	1421 62	
						15	CD	200	BASIC REFRACT	7½	1471 87	
						16	CD	200	BASIC REFRACT	7½	1446 87	
							CD	100	BASIC REFRACT	7½	755 68	
						17		500	INTL NICKEL	DEL		
								100	MONSANTO CHEM	DEL		
								200	EASTMAN KODAK	DEL		
								500	GENL ELEC	DEL		
UL 18	CT		CHECK FOR A/C									
			800 BASIC REFRACT		5706 72							
						24	CD	100	BASIC REFRACT	7½	755 68	
							CD	100	BASIC REFRACT	7½	74 49	0 00



Date	Field	Quantity or Amount	Description	Price	Amount	Date	Field	%	Description			
DEC 1941												
12	CD	100	CERRO DE PASCO	25¼	[illegible]							
	CD	100	CERRO DE PASCO	25¼	[illegible]							
	CD	100	GENL ELEC	25¼	[illegible]							
	CD	100	GENL ELEC	25¼	[illegible]							
	CD	200	INTL NICKEL	23	4630 00							
	CD	100	50 OF N J	42½	4268 50							
	CD	100	50 OF N J	42¼	4267 75							
	CD	95	50 OF N J	42¾	4065 25							
	CD	100	WESTINGHOUSE ELEC	72¾	7307 50	DEC 12	CD	100	AMER T & T	[illegible]	[illegible]	
							CD	200	LIGGETT MYERS	60	12268 75	
							CD	50	SHERWIN WMS	62½	3112 50	
							CD	50	SHERWIN WMS	62¼	3106 13	
DEC 12		200	LIGGETT MYERS	RECD								
		100	AMER T & T	RECD								
		100	SHERWIN WMS	RECD								
						DEC 12	R		CHECK ON A/C		1746 25	0 00
12	J		A/C TAX ON 95 SO OF N J BOT 12/12/42		5 24	DEC 13	R		CHECK ON A/C		5 24	0 00
						13		200	CERRO DE PASCO	DEL		
								200	GENL ELEC	DEL		
								200	NTL NICKEL	DEL		
								100	WESTINGHOUSE ELEC	DEL		
								295	SO OF N J	DEL		
								10M	ALLEGH 58/44 STPD	99	9707 94	
									INT 145 DAYS		281 39	
DEC 24		10M	ALLEGH 58/44 STPD	RECD		DEC 24		10M	ALLEGH 58/44	DEL		
29	CD	100	CHES & OHIO	52	5216 25							
	CD	100	CHES & OHIO	52	5216 00							
	CD	100	CHES & OHIO	52	5216 00							
27	CT		CHECK ON A/C 10M ALLEGH 58/44 STPD		9648 25	DEC 27	R		CHECK ON A/C		9648 25	0 00
			DUPLICATE STATEMENT									

IN ACCOUNT WITH CURTISS, HOUSE & CO. JOHN P MC WILLIAMS

OBTAIN THIS STATEMENT FOR INCOME TAX PURPOSES

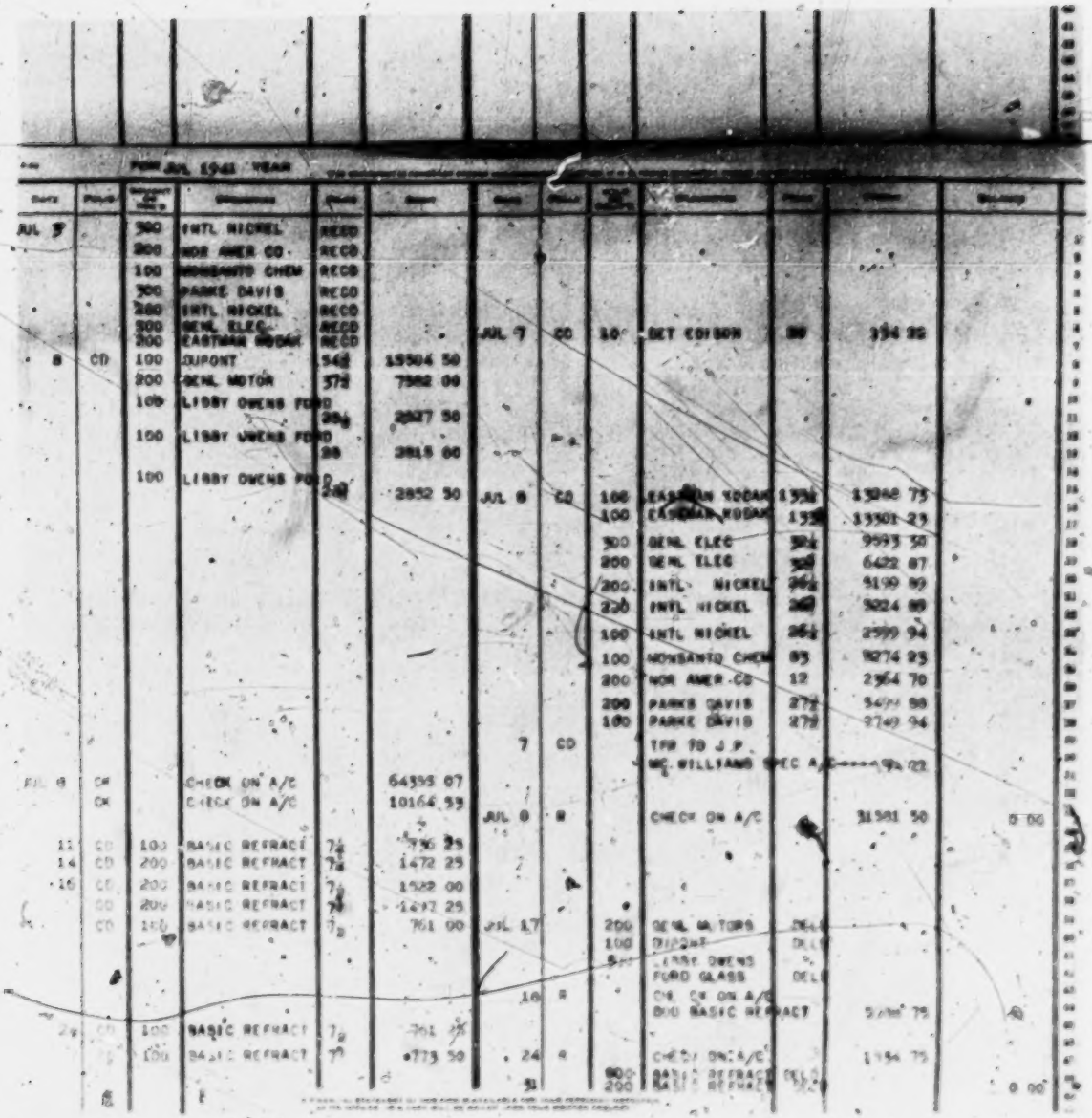
FOR NOV 1960 YEAR

DATE	FOLIO	BOUGHT OR REC'D	SECURITIES	PRICE	DEBIT	DATE	FOLIO	SOLD OR DELIVD	SECURITIES	PRICE	CREDIT	BALANCE
NOV 9		10M	YOS S & T 3⅛/ 11/1/60 A/C PURCH AT 103	RECD								
9	J		A/C 10M YOS S & T 3⅛/60 -O-									
			BOUGHT AT 103		10307 22							
9	CT		CHECK ON A/C		129 45	NOV 9		10M	YOS S & T 4⅛/61-8 A/C REDEMP	DEL		
						9	R		CHECK ON A/C REDEMP OF 10M YOS S & T 4⅛/61		10436 67	0 00
						NOV 12		10M	YOS S & T 1ST MTGE 3⅛/60-C	DELD		
NOV 29	CD	200	GENL ELEC	32⅝	6582 00							
	CD	100	GENL ELEC	32⅝	3278 50							
	CD	200	INTER NICKEL	25¼	5080 00							
	CD	100	SO OF N J	34⅛	3425 25	NOV 29	R		CHECK ON A/C		18361 75	
						30	R		CHECK ON A/C		14077 25	[illegible]
NOV 30			BALANCE .	LONG		NOV 30			BALANCE		14077 25	
		300	GENL ELEC									
		200	INTER NICKEL									
		100	SO OF N J									
			DUPLICATE STATEMENT									

JOINT EXHIBIT No. C-3

64

Joint Exhibit No. C-3



FOR JUL 1941 YEAR

DATE	PURCH	BOUGHT OR SOLD	SECURITIES	CHARGE	DEBIT	CREDIT	PURCH	BOUGHT OR SOLD	SECURITIES	PRICE	CREDIT	BALANCE
JUL 5		300	INTL NICKEL	RECD								
		200	NOR AMER CO	RECD								
		100	MONSANTO CHEM	RECD								
		300	PARKE DAVIS	RECD								
		260	INTL NICKEL	RECD								
		300	GENL ELEC	RECD			JUL 7	CD	10	DET EDISON	80	394 25
		200	EASTMAN KODAK	RECD								
8	CD	100	DUPONT	142	15504 50							
		200	GENL MOTOR	37½	7562 00							
		100	LIBBY OWENS FORD	28⅛	2827 50							
		100	LIBBY OWENS FORD	28	2815 00							
		100	LIBBY OWENS FORD	28⅞	2852 50		JUL 8	CD	100	EASTMAN KODAK	133⅜	13340 75
									100	EASTMAN KODAK	135	13501 25
									300	GENL ELEC	32½	9693 50
									200	GENL ELEC	32⅛	6422 87
									200	INTL NICKEL	26½	5199 99
									220	INTL NICKEL	26⅜	5824 99
									100	INTL NICKEL	26½	2999 94
									100	MONSANTO CHEM	93	9274 25
									200	NOR AMER CO	12	2364 70
									200	PARKE DAVIS	27⅛	5499 88
									100	PARKE DAVIS	27⅜	2749 94
							7	CD		TFR TO J P MC WILLIAMS SEC A/C		94 22
JUL 8	CK		CHECK ON A/C		64393 07							
	CK		CHECK ON A/C		10164 53		JUL 8	R		CHECK ON A/C		31581 50 0 00
11	CD	100	BASIC REFRACT	7½	736 25							
14	CD	200	BASIC REFRACT	7⅜	1472 25							
15	CD	200	BASIC REFRACT	7½	1522 00							
	CD	200	BASIC REFRACT	7⅜	1492 25							
	CD	100	BASIC REFRACT	7½	761 00		JUL 17		200	GENL MOTORS	DELI	
									100	DUPONT	DELI	
									5	LIBBY OWENS FORD GLASS	DELI	
							16	R		CK CK ON A/C DIV BASIC REFRACT		5686 75 40
24	CD	100	BASIC REFRACT	7½	761 25							
	CD	100	BASIC REFRACT	7⅜	773 50		24	R		CHECK ON A/C		1196 75
							31		900	BASIC REFRACT DIV		
									200	BASIC REFRACT DIV		0 00

Joint Exhibit No. C-3

IN ACCOUNT WITH CURTISS, HOUSE & CO. JOHN P MC WILLIAMS

FOR DEC 1941 YEAR

DATE	FOLIO	PURCHASES OR SALES	DESCRIPTION	PRICE	AMOUNT	DATE	FOLIO	SALES OR PURCHASES	DESCRIPTION	PRICE	CREDIT	BALANCE
DEC 12	CD	800	AMER T & T	139½	15901 00							
		200	LIGGETT MYERS B	66	13199 00							
						DEC 12	CD	100	CERRO DE PASCO	25½	2549 44	
							CD	100	GENL ELEC	25¼	2457 44	
							CD	100	GENL ELEC	25¼	2499 94	
							CD	200	INTL NICKEL	25	4549 90	
							CD	300	NOR AMER	10¼	3022 45	
							CD	100	WESTINGHOUSE ELEC	72½	7260 35	
						12	R		CHECK ON A/C		4570 00	0 00
12		100	CERRO DE PASCO	RECD								
		200	GENL ELEC	RECD								
		200	INTL NICKEL	RECD								
		300	NOR AMER	RECD								
		100	WESTINGHOUSE ELEC	RECD								
						DEC 22		100	AMER T & T	DELD		
								200	LIGGETT MYERS B	DELD		

DUPLICATE STATEMENT

JOINT EXHIBIT No. D-4

FORM 1040

UNITED STATES
INDIVIDUAL INCOME AND DEFENSE TAX RETURN 1940

NOT

FOR GROSS INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1940

or fiscal year beginning Jan. 1, 1940, and ended January 1, 1941

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY.

McWilliams, Brooks B.

590 The Arcade

Cleveland Cuyahoga Ohio

1731

822139

C. SURVEY REVIEW

INCOME

Salaries and other compensation for personal services	$ 38,320 00
Dividends	
Interest on bank deposits, notes, mortgages, etc.	4,980 00
Interest on corporation bonds	
Taxable interest on Government obligations, etc.	
Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses)	
Income from fiduciaries	
Rents and royalties	
Income (or loss) from business or profession	
a) Net short-term gain from sale or exchange of capital assets	247 12
b) Net long-term gain (or loss) from sale or exchange of capital assets	5,274 99
c) Net gain (or loss) from sale or exchange of property other than capital assets	
Other income (including income from annuities)	
Total income in Items 1 to 11	$ 50,274 11

DEDUCTIONS

Contributions paid	$ 177 00
Interest	2,100 98
Taxes	
Losses from fire, storm, shipwreck, or other casualty, or theft	
Bad debts	
Other deductions authorized by law	
Total deductions in Items 13 to 16	2,277 98
Net income (Item 12 minus Item 17)	$ 47,996 13

COMPUTATION OF TAX

Net income (Item 18 above)	$ 47,996 13
Less: Personal exemption	-
Credit for dependents	-
Balance (section 400 income)	$ 47,996 13
Less: Earned income credit	800 00
	$ 47,996 13
24. Normal tax (4% of Item 23)	$ 1,906 18
25. Surtax on Item 24	10,965 55
26. Total (Item 24 plus Item 25)	$ 12,868 73
31. Total income tax (Item 26, or if you filed a joint return, the total of Item 26 for both husband and wife)	$ 12,122 96
32. Victory tax withheld at source	$ 50 00
33. Income tax paid to a foreign country or U.S. possession	00
	50 00
34. Balance of income tax due (Item 31 minus Item 33)	$ 12,072 96
35. Defense tax (10% of Item 26)	1,286 87
36. Total income and defense tax due	

Joint Exhibit No. D-4

Schedule A.—INCOME [redacted] FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, COMMISSIONS, BONUSES AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

Page 1

1. Name and address of Employer. If a governmental unit, indicate whether Federal, State, or Local	2. Amount	3. Expenses (itemize)	4. Amount
	$		$

Total of column 2 minus total of column 4 (enter in item 1, page 1) $

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or syndicates listed herein	3. Interest received or accrued during the year	4. Amount of principal, interest on which is exempt from taxation	5. Interest on amount shown in column 4
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$	All	
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			All	
(c) Obligations of United States issued on or before September 1, 1917			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	
(e) United States Savings Bonds and Treasury Bonds			$1,000	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (d) above)			None	
(g) Total (enter as item 5, page 1)				$

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule E)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus total of columns 3, 4, and 5) (enter on line 6, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

(Note (1) nature of business ..... (2) number of places of business ..... (3) business name and address if different from name and address on page 1

1. Total receipts ..... $

COST OF GOODS SOLD (To be used where inventories are an income-determining factor)		
2. Inventory at beginning of year	$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (itemize below)		
7. Total of lines 2 to 6	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)	$	
10. Gross profit (line 1 minus line 9)	$	

OTHER BUSINESS DEDUCTIONS	
11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)	$
12. Interest on business indebtedness	
13. Taxes on business and business property	
14. Losses (explain below)	
15. Bad debts arising from sales or services	
16. Depreciation, obsolescence, and depletion (explain in Schedule E)	
17. Rent, repairs, and other expenses (itemize below or on separate sheet)	
18. Total of lines 11 to 17	$
19. Net profit (or loss) (line 1 minus line 9 and 18) (enter on line 9, page 1)	$

If the production, manufacturing, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C," "P," "C or M," on lines 2 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property (or type of building, name and address of tenant occupying)	2. Date acquired	3. Cost or other basis (as explained in instructions under Schedule E)	4. Amount fully depreciated as of end of year	5. Depreciation allowed or allowable in prior years	6. Depreciation rate or rates used for computation	7. Depreciation allowable for the year (see Regulations)	8. Depreciation allowed (or allowable) for the year (see Regulations)	9. Depreciation claimed this year
		$	$	$	$			$

16—47668

Joint Exhibit No. D-4

Non-Taxable Income Received during 1941 and not reported as income in this return.

	MUNICIPAL BONDS	INTEREST
10-M	City of Detroit	325.00
20-M	Metrop. Water Dist. Southern Calif	800.00
30-M	City of New York municipal Purposes	975.00
10-M	City of Philadelphia	400.00
5-M	San Francisco Oakland Bay Bridge	200.00

Security First National Bank of L. A.
W. J. Barlow Trust S-6568, composed of non-taxables, with one exception:
2-M Central New York Power 2¾%.
Pro-rated interest on these bonds amounted to $68.80 and is included in item 3, page 1.

Non-taxable interest in this trust received during year 1941 amounted to 422.23

Total 3,122.23

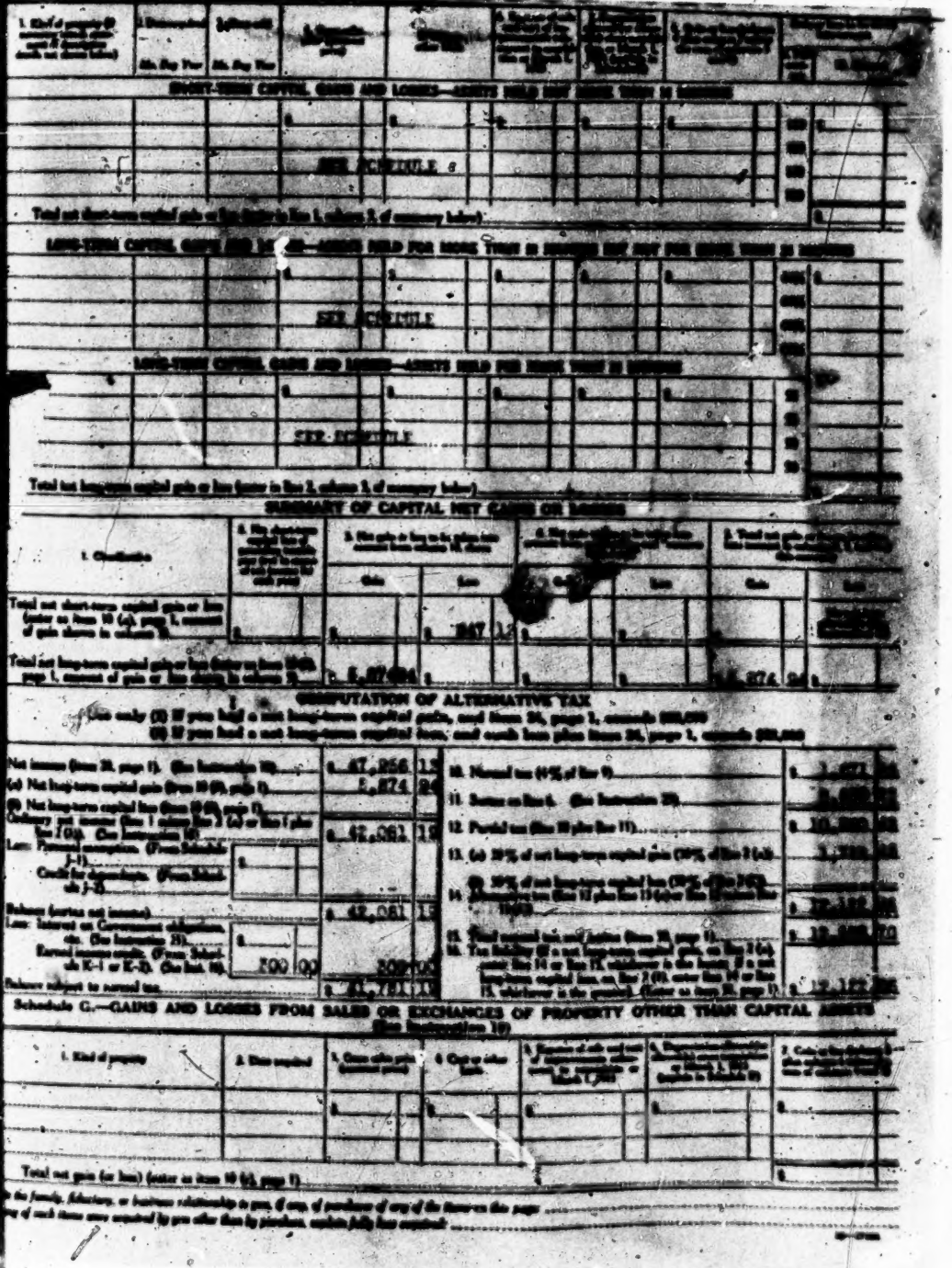
Brooks B. McWilliams,
590 The Arcade,
Cleveland, Ohio.

2-9-42

SCHEDULE D

Description	Date Acquired	Date Sold	Gross Sale Price	Cost	Expense of Sale	Depr.	Net Gain or Loss
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS							
2-M Anaconda 4½ %	12-27-39	1-7-40	2,000.00	1,125.00	-	75.00	100 75.00
4-M 61436	12-17-39	1-7-40	4,100.00	4,071.12	-	28.12	100 17.12
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS							
500 Int. Nickel	8-28-39	11-27-40	5,013.38	8,664.24	10.00	6,664.76	66-2/3 1,339.86
LONG TERM CAPITAL GAINS AND LOSSES - ASSETS HELD MORE THAN 18 MONTHS							
[illegible] Co.	7-1-38	1-2-40	2,000.00	1.00	3.00	2,000.00	50 1,501.50
Anaconda 4½%CD	10-18-37	1-7-40	6,100.00	6,028.34	-	46.34	50 35.17
[illegible] 4½%CL	1-25-37	11-27-40	10,000.00	10,014.14	-	14.14	50 17.07
[illegible] Door Co.	7-1-38	11-[illegible]	[illegible]	10.41	150.00	[illegible]	50 [illegible]
[illegible] Louis	8-18-39						
	2-4-37	12/12/40	8,000.00	10,000.37	[illegible]	1,000.00	50 837.71
[illegible]	1-21-37	11-27-40	8,000.00	9,000.00	-	1,000.00	50 837.67
[illegible]	12-17-37	11-27-40	8,827.61	8,[illegible]	50.00	2,113.64	50 1,056.77
[illegible]	7-18-38	11-27-40	2,000.00	[illegible]	[illegible]	971.31	50 479.16
[illegible]	7-11-38	11-27-40	3,000.00	[illegible]	25.00	1,000.00	50 837.41
[illegible] Republic Steel Corp.	1-21-37	12-24-40	10,000.00	10,011.00	5.00	500.00	50 211.85

Joint Exhibit No. D-4



Joint Exhibit No. D-4

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 14, 15, 16, 17, AND 18

1. Item No.	2. Explanation	3. Amount	4. Item No.	5. Explanation (Continued)	6. Amount
12	Society for Blind	$ 10 00	18	Sales	$
	Musical Arts Assn.	50 00		Personal Property	
	Seeing Eye	50 00		Stock Sales	
	Red Cross	50 00			
	Frontier Nursing Assn.	5 00			
	Anti-Tuberculosis League	5 00			
	Periaw Sanitorium	10 00			

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B

1. Source of income	2. Nature of income	3. Amount
		$

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21.

(1) Personal Exemption

Status	Number of persons for whom credit is claimed	Credit claimed
Single, or married and not living with husband or wife		$
Married and living with husband or wife		
Head of family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during which dependent lived in your home		Credit claimed
	Under 6 years	Over 6 years	
			$

Reason for support if over 18 years old

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT.

(1) If your net income is $5,000 or less, use only this part of schedule

Net income (item 20, page 1)	$
Earned income credit (10% of net income, above)	

(2) If your net income is more than $5,000, use only this part of schedule

Earned net income (not more than $14,000)	$ —
Net income (item 20, page 1)	47,258
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not allow less than $300)	300

QUESTIONS

1. State your principal occupation or profession: House wife
2. State whether you are a citizen ☒ or a resident alien ☐.
   If you file a return for any prior year? yes. If so, what was the latest year? 1939. To which Collector's office was it sent? Cleveland
4. [illegible] of income or deductions of both husband and wife included in this return? no
5. Name of husband or wife if separate return was made [illegible]
6. (b) Personal exemption, if any, claimed thereon: $2,000
   (c) Collector's office to which it was sent: Cleveland
6. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? (Answer "yes" or "no") yes (If answer is "yes," attach statement required by Instruction J.)

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Brooks B. McWilliams
(Signature) (See Instruction E)

(Signature)
(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the person preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

Subscribed and sworn to by Brooks B. McWilliams before me this 14th day of March, 1941

Marie McNair
(Signature and title of officer administering oath)

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

MARIE McNAIR, Notary Public
My commission expires June 11, 1941

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 14th day of March, 1941

Marie McNair
(Signature and title of officer administering oath)

Irma L. Hall
(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employer, if any)

MARIE McNAIR, Notary Public
My commission expires June 11, 1941

16—17328

JOINT EXHIBIT No. E-5

FORM 1040

UNITED STATES

INDIVIDUAL INCOME TAX RETURN

1941

For Calendar Year 1941

or fiscal year beginning _____, 1941, and ending _____, 1942

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year.

(Auditor's Stamp)

1931
936150
13-Ohio
(Collector's Stamp)

FIRST NAME AND ADDRESS PLAINLY. (See Instruction C)

McWilliams, Brooks B. (Mrs.)

590 Thetreade

Cleveland | Cuyahoga | Ohio

Cash Check M O

INCOME		
1. Salaries and other compensation for personal service, $	$	
2. Dividends	41,454	80
3. Interest on (a) bank deposits, notes, etc., $; (b) corporation bonds, $	2,426	72
4. Interest on Government obligations, etc.: (a) From line (K), Schedule A, $; (b) from line (J), Schedule A, $		
5. Rents and royalties. (See Schedule B)		
6. Annuities		
ITEMS 7, 8, AND 9, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME FOR LOSSES IN ADDITION TO ITEMS ABOVE.		
7. (a) Net short-term gain from sale or exchange of capital assets. (See Schedule D)	-0-	
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (See Schedule D)	15,774	66
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (See Schedule D)		
8. Net profit (or loss) from business or profession. (See Schedule E)		
(State total receipts, from line 1, Schedule H, $)		
9. Income (or loss) from partnerships, fiduciary interests and other income. (See Schedule F)		
10. Total income in items 1 to 9		33,106 56
DEDUCTIONS		
11. Contributions paid. (See Schedule G)	$ 150 00	
12. Interest. (See Schedule G)		
13. Taxes. (See Schedule G)	2,551 56	
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (See Schedule G)		
15. Bad debts. (See Schedule G)		
16. Other deductions authorized by law. (See Schedule G)		
17. Total deductions in items 11 to 16		2,701 56
18. Net income (item 10 minus item 17)		$ 28,404 50

COMPUTATION OF TAX				
19. Net income (item 18 above)		$ 28,404 50	26. Normal tax (4% of item 25)	$ 1,124 21
20. Less: Personal exemption. (See Schedule C-1)	$		27. Surtax on item 22. (See Instruction 27)	$ 8,210 44
21. Credit for dependents. (See Schedule C-2)			28. Total (item 26 plus item 27)	$ 9,334 65
22. Balance (surtax net income)		$ 28,404 50	29. Total tax (See Sec. 14, Schedule F)	$ 10,777 15
23. Less: Item 4 (a) above	$		30. Less: Income tax paid at source	$ 1,442 50
24. Earned income credit. (See Schedule C-3 of U.S.)	800 00	800 00	31.	87 50
25. Balance subject to normal tax		$ 27,604 50	32. Balance of tax (item 29 minus items 30 and 31)	$ 9,247 15

I/We swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us and is, to the best of my/our knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year covered pursuant to the Internal Revenue Code and the regulations issued thereunder thereof.

Subscribed and sworn to by Brooks B. McWilliams

before me this 24 day of February, 1942

Mirle McTeer

Brooks B. McWilliams

(Signature of taxpayer)

If this is a joint return both husband and wife must sign. If husband or wife is absent, he or she must make a return and file it separately.

Joint Exhibit No. E-5

74

SCHEDULE D-1 - SALES OR EXCHANGES OF CAPITAL ASSETS.

ASSETS HELD NOT MORE THAN 18 MONTHS.

Description	Date Acquired	Date Sold	Gross Sales Price	Cost	Expense of Sale	Gain or Loss	Percent	Net Gain or Loss
P-M Jr. Bonds 4½% '50	12-27-39	8-29-41	3,000.00	2,125.52	-	874.48	100	874.48
100 Shs. Amer. T & T	8-14-41	8-21-41	250.00	-0-		250.00	100	250.00
Rattlehouse 3 & 4 Pts.	Sept. '41	Oct. '41	46.49	-0-		46.49	100	46.49
			231.49	23				

ASSETS HELD NOT MORE THAN 18 MONTHS BUT NOT MORE THAN 24 MONTHS.

Kirby-Owen Corp.	9-10-39	8-8-41	8,434.62	12,626.25	70.00	5,721.43	2/3	3,480.95
[illegible] Cont. Co.	12-27-39	7-5-41	18,447.13	18,106.25	8.20	2,861.08	"	1,774.06
[illegible] & Co.	12-15-39	7-5-41	7,617.54	11,011.00	9.20	7,487.16	"	2,728.74
[illegible] Plastic Refrig.	12-14-39	7-8-41	7,[illegible]	9,606.80	70.80	12,204.17	"	1,856.12
[illegible] Corp. 4½% '50	12-27-39	8-11-41	1,010.00	1,068.02	-	58.02	"	38.68
			34,509.11	53,417.04				

ASSETS HELD FOR MORE THAN 24 MONTHS

Youngs.Steel Door	7-1-25	7-2-41	4,832.64	2.10	24.00	4,829.84	50%	2,414.77
Amer. T. & T.	12-16-29	12-16-41	25,247.96	16,716.75	10.00	8,468.77	"	1,734.38
Sherwin-Williams	12-8-29	12-10-41	6,216.26	3,322.25	5.56	2,107.89	"	1,551.95
Liggett & Myers	Sept.'29	12-10-41	25,581.72	19,747.00	11.00	6,188.28	"	2,092.64
10-M Allegheny 5s '44	1-29-37	12-12-41	8,772.84	10,076.64	5.00	1,303.80	"	651.90
			70,653.50	55,864.70				

Brooks P.M.Tillinar,
930 The Arcade,
Cleveland, Ohio.
12-3-42.

J3774 61

11-1-1830

Joint Exhibit No. E-5

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction C) Page 2

1. Obligations taxable	2. Interest received or accrued during the year (see Instructions A and C)	3. Interest included in amount filing this year	4. Amount of obligations entered in column 2, on which interest is excluded	5. Interest on amounts in column 4 (see Instructions A and C)
(a) Treasury Notes, Treasury Bills, and Treasury Certificates of indebtedness issued prior to March 1, 1941	$	$	All	$
(b) Obligations of Federal Farm Mortgage Corporation issued prior to March 1, 1941			All	
(c) Obligations of Home Owners' Loan Corporation issued on or before September 1, 1941			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of indebtedness issued prior to March 1, 1941			All	
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			$5,000	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (g) above) issued prior to March 1, 1941			None	
(g) Dividends on share accounts in Federal savings and loan associations				
Total (enter as item 4 (a), page 1)				$

(f) Obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality	Amount owned at end of year	Interest received or accrued during the year (subject to normal tax and surtax)
Total (enter amount of interest as item 4 (f), page 1)	$	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction B)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (explain below)	6. Net profit (subtract 3 and 4 and 5 from 2) (enter as item 5, page 1)
	$	$	$	$	$

Explanation of deductions claimed in columns 4 and 5

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, 13, 14, 15, AND 16

1. Item No.	2. Explanation	3. Amount
11.	British War Relief	10 00
	Cleveland Orchestra	50 00
	Junior League	5 00
	Seeing Eye	50 00
	Frontier Nursing Assn.	5 00
	Negro Committee	10 00
	Anti-Tuberculosis League	10 00
		140 00

1. Item No. (continued)	2. Explanation (Continued)	3. Amount (Continued)
13.	Sales tax	$ 50 00
	Personal Property	2,170 90
	Stock Sales tax	130 46
		2,351 36

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21. (See Instructions 20 and 21)

(1) Personal Exemptions

Status	Number of months during the year in each status	Credit claimed
Single or married and not living with husband or wife and not head of family		$
Married and living with husband or wife		
Head of family (explain below)		

(2) Credit for Dependents

Name of dependents and relationship	Number of months during the year: Under 18 years old	18 years or over	Credit claimed
			$

Reason for support if 18 years or over

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 24)

(1) If your net income is $3,000 or less, use only this part of schedule

Net income (item 18, page 1)	$
Earned income credit (10% of net income above)	

(2) If your net income is more than $3,000, use only this part of schedule

Earned net income (not more than $14,000)	$
Net income (item 18, page 1)	
Earned income credit (10% of earned net income or 10% of net income above, whichever amount is smaller, but do not enter less than $400)	

QUESTIONS

1. State your principal occupation or profession: House-wife
2. Name and address of employer
3. Did you file a return for any prior year? Yes. If so, what was the latest year? 1940. To which Collector's office was it sent? Cleveland, Ohio
4. If separate return was made for the current year, state: (a) Name of husband or wife [illegible] (b) Personal exemption, if any, claimed therein $ [illegible] (c) Collector's office to which it was sent Cleveland
5. Check whether the return was prepared on the cash ☒ or accrual ☐ basis.
6. If return on cash basis, do you elect, under section 42, to include as income received in the current year the increase for current and prior years in the redemption price of noninterest-bearing obligations issued at a discount? [illegible] If so, attach statement listing obligations owned and computation of the accrued income. Report such income as interest in item 3 or 4, page 1, whichever applicable.
7. Did you receive during the taxable year any nontaxable income other than interest reported in Schedule A (see Instruction C)? If so, attach schedule showing source, nature, and amount of such income.
8. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? If so, attach statement required by Instruction I.

Joint Exhibit No. E-5

DETACH PAGES 3 AND 4 IF NOT USED

Schedule F—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS (See Instruction 7)

1. Kind of property (If necessary, attach statement of descriptive details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements, subsequent to acquisition or March 1, 1913 (explain in Schedule J)	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	8. Gain or loss (if gross sales price, the sum of columns 5 and 7 is more than column 4)	Gain or loss to be taken into account: 9. Per cent age	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	66⅔	$
See detail attached								66⅔	
								66⅔	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS									
			$	$	$	$	$	50	
								50	
								50	
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$

SUMMARY OF NET CAPITAL GAINS OR LOSSES

1. Classification	2. Net short-term capital loss of preceding taxable year (not in excess of net income for such year)	3. Net gain or loss to be taken into account from column 10, above		4. Net gain or loss to be taken into account from partnerships and estates or trust funds		5. Total net gain or loss to be taken into account in column 2, 3, and 4 on this summary	
		Gain	Loss	Gain	Loss	Gain	Loss
1. Total net short-term capital gain or loss (enter as item 7 (a), page 1, amount of gain shown in column 5)	$ 247	$	$ 180 96	$	$	$	No net loss allowable (see Instruction 7)
2. Total net long-term capital gain or loss (enter as item 7 (f), page 1, amount of gain or loss shown in column 5)	$	$	$ 13,774 86	$	$	$	$ 13,774 86

COMPUTATION OF ALTERNATIVE TAX

Use only: If you had a net long-term capital gain, and item 22, page 1, exceeds $12,000, or If you had a net long-term capital loss, and such loss plus item 22, page 1, exceeds $12,000

1. Net income (item 18, page 1). (See Instruction 7)	$ 28,405 80	10. Normal tax (4% of line 9)	$ 1,672 19
2. (a) Net long-term capital gain (item 7 (f), page 1)	13,774 86	11. Surtax on line 6. (See Instruction 7)	15,118 93
(b) Net long-term capital loss (item 7 (f), page 1)		12. Partial tax (line 10 plus line 11)	$ 16,790 12
3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 7)	$ 42,179 66	13. (a) 30% of net long-term capital gain (30% of line 2 (a))	
4. Less: Personal exemption (From Schedule D-1)	$	(b) 30% of net long-term capital loss (30% of line 2 (b))	
5. Credit for dependents. (From Schedule D-2)	-0-	14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b))	$ 12,858 12
6. Balance (taxable net income)	$ 42,179 66	15. Total normal tax and surtax (item 28, page 1)	$ 9,324 00
7. Less: Item 4 (b), page 1	$	16. Tax liability (if a net long-term capital gain, on line 2 (a), enter line 14 or line 15, whichever is the lower; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 29, page 1)	$ 12,858 12
8. Earned income credit. (From Schedule R-1 or R-2). (See Instr. 7)	500 00		500 00
9. Balance subject to normal tax	$ 41,679 66		

Schedule G—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS (See Instruction 7)

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements, subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 7 (d), page 1)						$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page.
If any of such items were acquired by you other than by purchase, explain fully how acquired. Youngstown Steel Door Stock acquired by gift from husband, John P. McWilliams

Joint Exhibit No. E-5

Schedule H.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction E)

(a) Principal business or profession ... (b) Principal product or service ... (c) Business code number ...

(d) Number of places of business ... (e) Method of accounting: (1) Cash (2) Accrual (3) Other (specify) ...

(f) Did you "materially participate" in the operation of this business during 1954? (If "No," see instruction for limitations on losses.) ...

(g) Was there any change in determining quantities, costs, or valuations between opening and closing inventory? (If "Yes," attach explanation.) ...

(h) Was any part of your business conducted on property owned by your spouse? ...

(i) Did you deduct expenses for the business use of your home? ...

(j) Did you file all required Forms 1099? ...

(k) Did you have one or more employees during 1954? ...

(l) Did you have any depreciable property placed in service before 1954? ...

(m) Did you have any depreciable property placed in service after 1953? ...

(n) Did you have any depreciable property placed in service after 1953 for which you did not use the straight-line method? ...

Total receipts ... $

COST OF GOODS SOLD

(Use cost when inventories are not income-determining factor)

2. Inventory at beginning of year	$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (explain below)		
7. Total (lines 2 to 6)	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)	$	
10. Gross profit (line 1 minus line 9)	$	

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not included in "Labor" (do not deduct compensation for yourself)		$
12. Interest on business indebtedness		
13. Taxes on business and business property		
14. Losses (explain below)		
15. Bad debts arising from sales or services		
16. Depreciation, obsolescence, and depletion (explain on Schedule J)		
17. Rent, repairs, and other expenses (itemize below or on separate sheet)		
18. Total of lines 11 to 17		$
19. Total of lines 9 and 18		$
20. Net profit (or loss) (line 1 minus line 19) (enter as item 8, page 1)		$

If this production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "C," or "C or M," on line 2 and 6 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17 ...

Schedule I.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION F) (PERSONS NAMES AND ADDRESSES)	$
INCOME FROM FIDUCIARIES (PERSONS NAMES AND ADDRESSES)	$
INCOME FROM OTHER SOURCES (STATE NATURE)	$
Total receipts on Schedule I. Enter as item 9, page 1	$

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (Single assets costing $100 or more must be listed separately)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated or sold or disposed of during year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis for this computation	7. Estimated life (Enter a percentage, life (years), or explain method)	8. Estimated remaining life (years)	9. Depreciation allowable this year
		$	$	$	$			$

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)

I (we) (swear (or affirm) that I (we) prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I (we) have any knowledge.

Subscribed and sworn to before me this 15 day of ..., 194...

(Signature of person preparing the return)

(Signature of person preparing the return)

(Signature and title of officer administering oath)

(Name of firm or employer, if any)

NOTARY PUBLIC

My commission expires ... 19 54

EXCERPTS FROM TRANSCRIPT OF HEARING

(Filed May 3, 1945)

OFFICIAL REPORT OF PROCEEDINGS

BEFORE

THE TAX COURT OF THE UNITED STATES

JOHN P. McWILLIAMS,
ESTATE OF SUSAN P. McWILLIAMS,
BROOKS B. McWILLIAMS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket Nos. 5945 - 5946 - 5947

Place—Cleveland, Ohio
Date—April 19, 1945
Pages 1-24

* * * * * * * * * *

purchased—through a broker, rather—and are purchased by another member of the same family group,
7 through the same broker at approximately the same time, at approximately the same price, is a sale directly or indirectly between members of a family group, even though different certificates are obtained by the member of the family that does the purchasing.

That, in short, is our case.

Whereupon,

JOHN P. McWILLIAMS,

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

The Clerk: Tell the reporter your name, please, Mr. Witness.

Testimony of John P. McWilliams

The Witness: John P. McWilliams.

By Mr. Hadden:

Q. What is your business, Mr. McWilliams?

A. I am president of the Youngstown Steel Door Company.

Q. You live here in Cleveland?

A. I do.

Q. What is the name of your wife?

A. Brooks Barlow McWilliams.

Q. And your mother, who is now dead, was Susan P. McWilliams?

8 A. Yes.

Q. How long have you been married?

A. I was married in 1928.

Q. Since you have been married, what duties have you had with respect to your wife's property?

A. I have had entire charge of it.

Q. Does that include investing and re-investing her funds?

A. It does.

Q. And your mother died when?

A. November of 1941.

Q. What was your relationship with your mother, with respect to her business affairs?

A. Well, my mother was an invalid. I had complete charge of the purchase and sale of her securities.

Q. Your mother had substantial property during her life?

A. My mother had an estate of approximately $350,000, as I remember it, at the time of her death.

Q. And at the time that these transactions occurred, which are involved in this litigation, your wife had considerable property?

A. Yes.

Q. And you managed that, and bought and sold, during the years that are involved in these cases?

9 A. Yes.

Q. You have no written power of attorney?

A. No.

Q. But that course of conduct had continued since your marriage, is that correct?

A. Correct.

Q. Now, coming first to Case No. 5946, the Estate of Susan P. McWilliams, Petitioner, the capital loss that has been disallowed by the Commissioner, involved the sale of 100 shares of Eastman Kodak.

Will you just tell the Court what you did with regard to ordering the sale of that stock?

A. I called up my broker, Mr. Allan House of Curtis, House & Company, and asked him to sell the stock.

Q. And at the same time, in the same conversation, did you give him a further order with respect to substantially the same shares?

A. I told him that after that stock had been sold, to buy some for my account.

Q. Did you mention the price at the time you gave the order at which you wanted to buy it?

A. I said I would like to buy it at as near the selling price as we could get.

Q. Now, coming to Case No. 5947, which involves the deficiency in your wife's income tax liabilities for the
10 years 1940 and 1941, it has been stipulated that on certain dates in those two years, substantial amounts of securities were sold through Curtis, House and Company. Will you tell us just how you placed those orders.

A. I called Mr. Allan House of Curtis, House & Company and told him to sell certain securities belonging to Brooks B. McWilliams.

Q. And in the same telephone conversation did you say anything about purchasing substantially the same securities as on your own behalf?

A. I told him that after those sales had been made, to Brooks B. McWilliams, I would like to have purchases made at approximately the same price, as near as possible.

Q. For your own account?

A. For my own account.

Q. Coming now to your own case, Case No. 5945, there are certain sales of securities for your own account in-

volved in this tax deficiency. Will you tell the Court what you stated to Mr. House when you placed those orders?

A. I gave Mr. House an order to sell those securities for my own account.

Q. And in the same conversation, did you give orders to purchase for your wife's account, substantially the same securities?

A. After my own had been sold.

11 Q. In other words, your instructions were to buy them after yours had been sold?

A. That is correct.

Q. At substantially the same price, if possible?

A. That's right.

Q. I would like to ask you whether in these three accounts, after the securities were purchased, if they ever were owned again by the taxpayer who had sold them?

A. I am not sure that I understand your question, but—

Q. Well—go ahead.

A. But it is possible that in the three years passed, that both my wife and I may have purchased some one of the securities that are involved in these cases. I am not—I don't know as to that.

Q. Let me—

A. As far as any immediate repurchase or a sale is concerned, there is nothing of that kind.

Q. Well, let me ask you this question: In your case, the loss of certain securities is involved, and at the time you sold those securities Mrs. McWilliams purchased substantially the same securities. Have you ever purchased from her, or by any other means reacquired in your own estate those securities which she purchased?

12 A. I have not.

Q. And does that apply equally to your mother's case and also to your wife's case?

A. It does.

Q. I wish you would tell the Court the reason for selling the securities in your own case?

A. I did it to establish a tax loss to counter some very

substantial capital gains which had taken place in the same year.

Q. And was that the same reason that Mrs. McWilliams sold securities that are involved in her deficiency?

A. It is.

Q. And the same applies to your mother's case?

A. It is.

Q. You had no aversion toward these securities, you disliked them for no reason?

A. No, that is one reason why I bought them.

Q. You had funds that were available at the time?

A. I did.

Q. And the same thing applied to your wife at the time you sold the securities in your account she had funds available, and had no objection or no dislike for the securities?

A. That is correct.

Q. I wish you would tell the Court whether or not your mother's financial transactions were recorded
13 and the books were kept in connection with her business matters?

A. Well, as far as my wife and myself are concerned, my secretary has presented us each month with a statement of assets and liabilities running back, I think, to about 1932. As far as my mother is concerned, similar statements have been prepared monthly running back to about the time of my father's death in 1936.

Q. Stocks that are owned by your wife stand in her own name?

A. They do.

Q. The same thing applies to yours?

A. They do.

Q. And the securities belonging to each of you are segregated?

A. They are.

Q. The same thing applies to your mother's property when she was living?

A. Well, as I remember it, all of my mother's property was in her own name up to the time of her death, and when sales were made of securities by her, I attached

a signed power of attorney to the stock certificates in making delivery. Since my mother's death, the securities have been put in the name of John P. McWilliams, Trustee, under the will of Susan P. McWilliams, and that is the way they stand now.

14 Q. But, prior to her death, and during the time that the transactions transpired that are involved in litigation here, her property was separately segregated, and the securities that she owned and stocks that she owned, stood in her own name?

A. That is correct.

Q. And each one of you have had separate bank accounts?

A. Yes.

Q. You and your wife have filed separate income tax returns?

A. Yes.

Q. How long has that been the fact?

A. My recollection is ever since we have been married.

Q. Does your wife own securities and property in excess of the amounts involved in these particular transactions that are involved in this lawsuit?

A. Very much in exeess.

Q. And I think you have testified about your mother's estate that at the time she died she had approximately $350,000 of property, and that was substantially her situation at the time this Eastman Kodak stock was sold in 1940?

A. That is correct.

Mr. Hadden: You may have the witness.

Mr. Bloomenthal: There is no cross examination.

Mr. Hadden: Unless the Court has anything.

15 The Court: The Petitioner rests?

Mr. Hadden: Yes.

Mr. Bloomenthal: The Respondent has no cross examination of this witness, but we do have one witness to put on the stand briefly. We will call Mr. Allan C. House.

Whereupon,

ALLAN C. HOUSE,

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

The Clerk: Will you state your name, please?

The Witness: Allan (spelling) A-l-l-a-n- C. House.

By Mr. Bloomenthal:

Q. Will you state your full name and address and occupation for the record?

A. Allan C. House; I am a member of the firm of Curtis, House & Company, 1201 Union Commerce Building, Cleveland, Ohio.

Q. Mr. House, you are well acquainted, are you not, with Mr. John P. McWilliams, the Petitioner in this case?

A. Yes, sir.

Q. Do you know his wife also?

A. Yes.

16 Q. And did you know his mother also during her life-time?

A. Very slightly.

Q. Were they customers of your firm in 1940 and 1941?

A. Yes.

Q. Do you recall the transaction that Mr. McWilliams testified to with respect to the sale of certain Eastman Kodak stock by his mother in 1940?

A. Yes, I do.

Q. Did you have any conversation with Mr. McWilliams at or prior to the time that transaction occufred?

A. At or prior, you ask?

Q. Yes.

A. Only at the time.

Q. At the time? Will you tell the Judge what the conversation was, and where it took place?

A. The conversation is virtually—I say virtually, what Mr. McWilliams stated in court. He telephoned me and gave me instructions to sell 100 shares of Eastman Kodak.

Q. And did he say anything to you about the price?

A. Yes.

Q. And what did he say?

A. Following the order to sell 100 Eastman Kodak, to purchase, for another account, 100 shares, at the same price, if possible, or near that price, as the price
17 to which it was sold.

Q. Well, did he indicate to you that the transaction was to be,—that the sales were to be consummated even if it was impossible to purchase the other shares?

A. No, nothing was said.

Q. I mean the same shares?

A. No, nothing was said about that.

Q. Did he tell you—

A. If I understand you correctly.

Q. Well, what I mean to say is: Were you instructed to carry out the sale of the securities on behalf of Susan P. McWilliams regardless of whether it would be possible to buy the same securities at approximately the same price for John P. McWilliams?

A. No, there was no restrictions put on the sale.

Q. Did he tell you how soon he wanted the other part of the transaction to be finished?

A. No.

Q. He did tell you that the same was to establish a tax loss, did he not?

A. That's right.

Q. And, as a matter of fact, the purchase of 100 shares of Eastman Kodak on his behalf was consummated almost immediately after the sale?
18 A. I don't know that. I mean—

Q. You don't recall that?

A. When you say almost immediately—

Q. Well, within a very short time?

A. I think it was, I assume it was, for—I say that, for it is reasonable it could be. I don't know the exact time or date of the purchase.

Q. Do you recall who handled both the purchase and the sale on behalf of your firm in New York?

A. No.

Q. I mean the brokerage house in New York?

A. Our correspondent, Clark Dodge Company.

Q. Did you personally give them any instructions about the transaction?

A. I did.

Q. Will you tell what they were?

A. The instructions were to sell 100 Eastman Kodak; after the sale, purchase 100 Eastman Kodak at the same price, if possible, if not as near as possible. Furthermore, I telephoned the order. I am reminded of ~~that by~~ a memorandum on a slip.

Q. You have a memorandum that you made at the time?

A. Yes.

Q. And that is what you are using now to refresh your recollection?

A. Yes. For the reason that I wanted to make
19 it known to our correspondent this was for tax sale, and consequently a complete change of ownership, and so forth.

Q. Did you specify that they were to arrange for the receipt of different securities—that is, for different certificate numbers for the purchaser?

A. I beg your pardon, I didn't get that.

Q. I say, did you arrange for the purchaser to receive different security numbers—different certificate numbers rather than the securities which were being sold?

A. Well, I didn't arrange. I simply stipulated that this was for tax purposes, and in consequence, of course, a complete change of ownership, change of certificates and independent funds, and such features as pertaining to a tax sale.

Q. And, in general, did the same arrangement prevail with respect to the sales and purchases that you handled for Mr. McWilliams and his wife in 1940 and 1941?

A. That is correct.

Q. And was there any feature about those sales that was different than the preceding sale?

A. No, the conditions were similar.

Q. And you made a memorandum of all these transactions at the time they occurred, did you not?

A. As they appeared on the buy-and-sell tickets.

Q. Mr. House, it has been agreed by the parties
20 that the securities involved in this case were sold to or bought from various brokers in New York, that part of the transaction was all handled by your New York correspondent, wasn't it?

A. That is correct.

Q. And you had nothing to do with it?

A. That is correct.

Q. As far as you were concerned, they could have all been sold by the same broker by your New York correspondent, and bought by the same broker, so long as they were different securities?

A. So far as I am concerned?

Q. Yes, I mean so far as any instructions you gave them?

A. Will you repeat that, please?

Q. Well, maybe I can simplify it. It means this: You emphasized in your instructions to your New York correspondent that you wanted the thing to result in a complete exchange of certificates?

A. That is correct.

Q. And you didn't care who bought—

A. That is correct.

Q. (Continuing) —the certificates?

A. That is correct.

Q. Or from whom they purchased them?

21 A. And I might say you will find, no doubt, in the office of the Clark Dodge and Company the evidence giving the names of the brokers on both sides of the transaction.

Q. I see.

I think that is all.

Mr. Hadden: That is all.

The Court: Were the certificates that were delivered to you by Mr. McWilliams in his name, in the name of his wife and the name of his mother?

The Witness: That I can't answer, sir, because I didn't see them.

The Court: Well, they passed through your house?

The Witness: Yes, sir.

The Court: They were delivered to you?

The Witness: Yes, sir, but I didn't see the actual certificates.

The Court: In purchasing securities, were they simply purchased in street names, or were they actually transferred to Mr. McWilliams, his wife and his mother?

The Witness: As the purchases were made, the instructions were given us that the securities should be bought on in those respective names. I think I am correct in that.

Mr. Bloomenthal: I just merely want to have the record show, Mr. House, you appear here in response
22 to a subpoena served upon you on behalf of the Commissioner of Internal Revenue?

A. That is correct.

Mr. Bloomenthal: That is all.

The Court: Cross examine?

Mr. Hadden: No, but I would like to recall Mr. McWilliams, just to clear up that question which the Court asked.

Whereupon,

JOHN P. McWILLIAMS,

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

DIRECT EXAMINATION—(Continued).

By Mr. Hadden:

Q. Will you tell the Court, if you know, in whose names the certificates stood when you made delivery to Curtis, House & Company, for the sale for the account of your wife, Brooks B. McWilliams?

A. They were in the name of Brooks B. McWilliams.

Q. And the securities that were delivered by sale in your own account were in whose name?

A. John P. McWilliams.

Q. And for your mother's account?

23 A. Was this before or after my mother's death?

Q. Before.

A. Susan P. McWilliams, and I think, possibly in one or two cases, she handled some securities in the name of

Susan P. N. McWilliams, I don't recall what the Eastman Kodak Stock was listed in, but I never hold any securities in street name.

Q. And when the securities were purchased on the New York Stock Exchange for your wife's account in the transactions here involved, did you receive certificates or did she receive certificates in her name?

A. She did.

Q. And in your account, did you receive certificates in your name?

A. I did.

Mr. Hadden: That is all.

Mr. Bloomenthal: That is all.

(Witness excused.)

. . . . . .

DESIGNATION OF CONTENTS OF RECORD ON REVIEW

(Filed March 22, 1946)

To the Clerk of The Tax Court of the United States:

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by and through his attorneys, Sewall Key, Acting Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for the purpose of the review which he, the said petitioner on review, has heretofore taken to the United States Circuit Court of Appeals for the Sixth Circuit, hereby designates for inclusion in the record on review the following:

1. Docket entries of the proceedings before the Tax Court.
2. Pleadings:
   (a) Petition, including annexed copy of deficiency notice,
   (b) Answer.

3. Findings of fact and opinion of the Tax Court promulgated August 20, 1945.
4. Decision entered August 20, 1945.
5. Petition for review and notices of filing petition for review.
6. Stipulation of facts.
7. Testimony of witnesses John P. McWilliams and Allan C. House, contained on pages 7 to 23, inclusive, of official report of proceedings had before the Tax Court on April 19, 1945.
8. Statement of Points.
9. Order of Court extending time for filing record to April 15, 1946 (not included in record).
10. This designation.

WHEREFORE, it is requested that copies of the record as above designated be prepared and transmitted to the United States Circuit Court of Appeals for the Sixth Circuit in accordance with the rules of said Court.

(Signed) SEWALL KEY CAR
Acting Assistant Attorney General,

(Signed) J. P. WENCHEL, CAR
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

Statement of Service:

A copy of this designation of contents of record on review was mailed to John A. Hadden, Esq., 1882 Union Commerce Building, Cleveland 14, Ohio, attorney for respondent on review, on March 22, 1946.

(Signed) CHAS. E. LOWERY,
Special Attorney,
Bureau of Internal Revenue.

CERTIFICATE

I, Robert C. Tracy, acting clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 67, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In Testimony Whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 4th day of April, 1946.

Robert C. Tracy,
Acting Clerk,
The Tax Court of the United States.

(SEAL)

ORDER ENLARGING TIME

On motion of counsel for the petitioner, it is

Ordered that the time for preparation, transmission and delivery of the record *sur* petition for review of the above entitled proceeding in the United States Circuit Court of Appeals for the Sixth Circuit is extended to February 14, 1946.

(Signed) Bolon B. Turner,
Presiding Judge.

Dated: Washington, D. C.
December 11, 1945.

Now: April 4, 1946, the foregoing order is certified from the record as a true copy.

(SEAL)

Robert C. Tracy,
Acting Clerk.

ORDER

(Filed In The Tax Court of the United States
February 11, 1946)

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

COMMISSIONER OF INTERNAL REVENUE, *Petitioner on Review,* vs. JOHN P. McWILLIAMS, *Respondent on Review.*	T. C. Docket No. 5945
COMMISSIONER OF INTERNAL REVENUE, *Petitioner on Review,* vs. ESTATE OF SUSAN P. McWILLIAMS, DEC'D., JOHN P. McWILLIAMS, EXECUTOR, *Respondent on Review.*	T. C. Docket No. 5946
COMMISSIONER OF INTERNAL REVENUE, *Petitioner on Review,* vs. BROOKS B. McWILLIAMS, *Respondent on Review.*	T. C. Docket No. 5947

(Filed February 7, 1946)

Before: HICKS, SIMONS and MARTIN, JJ.

FOR CAUSE SHOWN, IT IS ORDERED that the time within which to file the record on review in the above-entitled causes with this Court be, and the same is, extended to and including April 15, 1946.

IT IS FURTHER ORDERED, that the Clerk of this Court is directed to transmit to the Clerk of The Tax Court of the United States a certified copy of this order.

Approved for Entry:

(s) XEN HICKS, *Judge*,
United States Circuit Court
of Appeals for the Sixth Circuit.

A true copy
Attest: (s) J. W. MENZIES, *Clerk*,
U. S. Circuit Court of Appeals,
Sixth Circuit.

(SEAL)

Now: April 4, 1946, the foregoing order is certified from the record as a true copy.

ROBERT C. TRACY,
Acting Clerk.

(SEAL)

STIPULATION

(Filed May 3, 1946)

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, vs. JOHN P. McWILLIAMS, *Respondent.*	No. 10,240
COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, vs. ESTATE OF SUSAN P. McWILLIAMS, DEC'D., *Respondent.*	No. 10,241
COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, vs. BROOKS B. McWILLIAMS, *Respondent.*	No. 10,242

Whereas the above-entitled cases present the same question and were consolidated for hearing and opinion before the Tax Court of the United States; and whereas the pleadings, statement of evidence and petition for review in each case are substantially the same;

It is hereby stipulated by and between the parties, through their respective attorneys, that, subject to the approval of this Court, the above-entitled cases shall be consolidated for purposes of printing the record on appeal, briefing, and hearing; and

It is further stipulated that the consolidated printed record on review shall omit duplicatory documents and shall consist of all of the certified transcript sur petition for review in No. 10,240, together with the Stipulations of Facts in Nos. 10,241 and 10,242; and that the remaining portions of the certified transcripts sur petitions for review in Nos. 10,241 and 10,242 shall be considered as having the same force and effect as if separate printed records had been filed in each case.

SEWALL KEY,
Acting Assistant Attorney General,
Counsel for Petitioner.

JNO. A. HADDEN,
Counsel for Respondents.

APPROVED:
(Signed) XEN HICKS,
Circuit Judge.

TRANSCRIPT OF PROCEEDINGS FOR CERTIORARI APPLICATION

CAUSES ARGUED AND SUBMITTED

(October 17, 1946)

(Before: Allen, Martin and Miller, *JJ.*)

This cause is argued by Berryman Green for Petitioner and by John A. Hadden for Respondent and is submitted to the court.

The case of Commissioner of Internal Revenue v. John P. McWilliams, No. 10,240, being called for argument, counsel in open court, pursuant to oral stipulation, agree that any order entered therein shall also be entered in this case, and the finding in said case No. 10,240 shall be controlling and determinative herein.

JUDGMENT

(No. 10,240)

(Entered December 2, 1946)

On petition to review decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that the decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with the opinion of this Court.

JUDGMENT

(No. 10,241)

(Entered December 2, 1946)

On petition to review decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that the decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with the opinion of this Court.

JUDGMENT

(No. 10,242)

(Entered December 2, 1946)

On petition to review decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of the record from the Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, It is now ordered, adjudged and decreed by this Court that the decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with the opinion of this Court.

OPINION

(Filed December 2, 1946)

Nos. 10240, 10241, 10242

UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH CIRCUIT

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
No. 10240 v.
JOHN P. McWILLIAMS,
Respondent.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
No. 10241 v.
ESTATE OF SUSAN P. McWILLIAMS, Deceased, John P. McWilliams, Executor,
Respondent.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
No. 10242 v.
BROOKS B. McWILLIAMS,
Respondent.

On Petitions to Review Decisions of the Tax Court of the United States.

Decided December 2, 1946.

Before ALLEN, MARTIN and MILLER, Circuit Judges.

ALLEN, Circuit Judge. These petitions for review were consolidated for hearing before the Tax Court of the United States and in this court. They involve deficiencies in income tax assessed against John P. McWilliams for the year 1941 in the amount of $7,110.33, of $296.75 for the year 1940 against the estate of Susan P. McWilliams, and of $1,845.52 and $4,184.07 for the years 1940 and 1941 respectively against Brooks B. McWilliams.

John P. McWilliams and Brooks B. McWilliams are residents of Cleveland, Ohio, and are husband and wife. Susan P. McWilliams, deceased, was the mother of John P. McWilliams, who during the period in question was the executor of her estate.

In 1940 and 1941 John P. McWilliams bought and sold a considerable number of valuable securities for his own and his wife's account, and also for his mother's account until her death. He had managed the property of his wife and mother for a number of years. Most of the transactions involved were sales during the taxable years, made by John P. McWilliams for his individual account and for his wife's account. At the time McWilliams placed the orders for sale for his individual account he instructed his brokers to purchase a like number of the same shares at as nearly the same price as possible for the account of his wife. In giving the orders to sell shares for his wife's account he instructed his brokers to purchase a like number of the same shares for his individual account. In each instance the broker was told that the sale was for the purpose of establishing a tax loss. The instructions were carried out, and new certificates bearing different numbers from those sold were issued to the taxpayers. All of the securities were sold through a Cleveland stock broker, and executed in the regular manner on the New York Stock Exchange. The purchasers of the securities were unknown to the taxpayers.

Under substantially the same circumstances as those described above McWilliams in 1940 sold certain shares of stock for the account of his mother, and on the same day purchased a like number of shares of the same stock for his individual account.

A long-term capital loss on these sales was claimed by McWilliams amounting to $21,276.53 in 1941, and by his wife, amounting to $5,592.49 in 1940, and $13,946.95 in 1941. A similar loss in the amount of $1,755.79 was claimed by Susan P. McWilliams. All of these deductions were disallowed by the Commissioner as being prohibited by § 24(b), I. R. C., which so far as material reads as follows:

> "(b) Losses from sales or exchanges of property.
>
> (1) Losses disallowed. In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—
>
> (A) Between members of a family, as defined in paragraph (2) (D) . . ."

The Tax Court allowed the deductions upon the authority of *Commissioner* v. *Ickelheimer*, 132 Fed. (2d) 660 (C. C. A. 2).

The narrow question involved is the meaning of the words in the statute, "directly or indirectly . . . Between members of a family, . . ." This is a question of law which this court is to decide without reference to the findings of fact or the inferences of the Tax Court. *Trust of Bingham* v. *Commissioner*, 325 U. S. 365, 371. The Tax Court held that the sales were not between the members of a family because the stocks were purchased by third parties unknown to the taxpayers.

We think the decision of the Tax Court was erroneous, and that the sales clearly were indirect sales between members of the same family. The statute must be construed to carry out its purpose. *Griffiths* v. *Commissioner*, 308 U. S. 355, 357; *Helvering* v. *Clifford*, 309 U. S. 331, 334. It must be read in the light of the mischief to be corrected and the end to be attained. *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 124.

The purpose of the legislation which first appeared in the Revenue Act of 1934 was the prohibition of deductions for losses from sales between members of a family. The preliminary subcommittee report of the House Ways and Means Committee on Tax Avoidance, 73d Cong., 2d Sess., p. 15, stated:

> "Many instances have been brought to light where transactions have taken place for the sole purpose of taking a loss for income-tax purposes. It is believed that the recommendation of the subcommittee, if followed, will effectually close this opportunity for tax avoidance."

The report of the full Ways and Means Committee (H. Rep. No. 704, 73d Cong., 2d Sess., p. 23) stated as to the purpose of this section that "Experience shows that the practice of creating losses through transactions between members of a family and close corporations has been frequently utilized for avoiding the income tax. It is believed that the proposed change will operate to close this loophole of tax avoidance."

If losses from these sales are permitted to be deducted, the purpose of the statute will be frustrated. These sales were admittedly for the purpose of establishing tax losses, and the broker was so informed. There was no other purpose in the transaction. None of the taxpayers intended to part with the investment, for the broker was instructed

to repurchase a like number of shares in each instance, at as nearly the same price as possible. It is significant, as expressive of the taxpayer's intention, that the broker was not instructed that the sales were to be consummated even if it should prove impossible to purchase like shares. Considered as a whole, the transactions were agreements to sell between members of the same family; and fairly covered by the phrase of the statute, "directly or indirectly . . . Between members of a family, . . ."

Sales of stock and simultaneous repurchase through third parties do not establish a deductible loss. *Esperson* v. *Commissioner*, 49 Fed. (2d) 259, 260 (C. C. A. 5), cert. denied, 284 U. S. 658. Cf. *Schoenberg* v. *Commissioner*, 77 Fed. (2d) 446 (C. C. A. 8), cert. denied, 296 U. S. 586; *Du Pont* v. *Commissioner*, 118 Fed. (2d) 544 (C. C. A. 3), cert. denied, 314 U. S. 623.

The taxpayers attempt to distinguish these cases by pointing out that in each case the taxpayer who sold the securities reacquired them. It is true that the seller and the buyer in the instant cases were not identical; but the husband and son was the agent for his wife and mother, each of whom had independent and substantial estates. He had, as he testified, "entire charge" of their affairs. He acted for all three taxpayers. He decided to sell his own stocks, and decided as his wife's agent to buy back the identical number of shares of the same stock at the same price, so far as possible. The result was that shares of the same denomination and value, and in the same amount, were in every case on the same day acquired by members of the family group.

No material change was made in the property rights held by the broker for the taxpayers, for a certificate for the same number of shares, although printed upon different paper and bearing a different number, represents precisely the same kind and value of property as does another certificate for a like number of shares of stock in the same corporation. *Richardson* v. *Shaw*, 209 U. S. 365, 378; *Gorman* v. *Littlefield, Trustee*, 229 U. S. 19, 23.

To consider this an arm's length transaction is to treat the wife and mother as complete strangers; "to let mere formalism obscure the normal consequences of family solidarity; and to force concepts of ownership to be fashioned out of legal niceties which may have little or no significance in such household arrangements." *Helvering* v. *Clifford*, supra, 336, 337. In each instance the conclusion of the transaction was that the parties were in the same position as if they had dealt directly with each other as buyer and seller.

In *Commissioner* v. *Ickelheimer*, supra, upon which the Tax Court based its decision herein, the decision was by a divided court in the Tax Court, and was affirmed by a divided court, Judge Learned Hand dissenting.

The instant cases are stronger on the facts in favor of the Commissioner than the *Ickelheimer* case, for there the purchase was delayed for a day or two, while here the orders to sell and the orders to purchase were placed at the same time and through the same broker, and consummated on the same day. But we do not ground our decision on this variation in the facts. We think that the dissenting opinion in the *Ickelheimer* case presents a better view of the purpose of the congressional enactment than the majority decision, and agree with Judge Learned Hand that the allowance of such deductions ignores the meaning of the word "indirectly" in the statute and frustrates the congressional purpose. The statute covers transactions "by which, in accordance with a preexisting design, property passes by whatever combination of moves, at a substantially unchanged price" from one member of the family to another. (*Commissioner* v. *Ickelheimer*, supra, dissenting opinion, p. 662.)

The decision of the Tax Court is reversed, and the case is remanded for further proceedings in accordance with this opinion.

MILLER, Circuit Judge, dissenting.

In the recent decision in *Commissioner* v. *Tower*, decided February 25, 1946, — U. S. —, the Supreme Court restated and reaffirmed the rule of many decades in stating " 'The legal right of a taxpayer to decrease the amount of what would otherwise be his taxes, or altogether avoid them, by means which the law permits, can not be doubted.' *Gregory* v. *Helvering*, 293 U. S. 465, 469. We do not reject that principle." In my opinion, the transactions here involved fall within that rule. The sale by the taxpayer in each instance was an actual, bona fide sale on the open market between a seller and a buyer dealing at arm's length. The buyer was not a member of the taxpayer's family, was in fact unknown to the seller, and had no obligation, agreement or understanding in any shape or form to resell or transfer the securities so purchased to any member of the seller's family or to anyone. He paid for them out of his own funds. The record shows no resale by the purchaser of the securities so purchased. Under such circumstances the taxpayer did not sell either directly or indirectly to a member of

his family. He sold to a stranger. The transaction was a completed one and terminated at that point. It resulted in a deductible loss for income tax purposes. What another member of the taxpayer's family did in an entirely separate transaction with a different unknown stranger, again dealing at arm's length in the open market, does not, in my opinion, merge the two transactions into one or change the legal aspect of the completed sale on the part of the first taxpayer. Unless we are to consider the income of the several members of a family group as a unit for income tax purposes, each transaction is a separate one for each individual taxpayer. Congress has not yet enacted legislation merging such individual incomes, though several times proposed. The motive of tax avoidance does not take the place of such legislation. I am of the opinion that the ruling of the Tax Court should be affirmed. *Commissioner* v. *Ickelheimer*, 132 Fed. (2d) 660; *Dobson* v. *Commissioner*, 320 U. S. 489; *John Kelley Company* v. *Commissioner*, 326 U. S. 521.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the cases of Commissioner of Internal Revenue vs. John P. McWilliams—No. 10,240, Estate of Susan P. McWilliams, deceased—No. 10,241, Brooks B. McWilliams—No. 10,242, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 13th day of December, A. D. 1946.

J. W. Menzies,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 945

ORDER ALLOWING CERTIORARI—Filed March 3, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 946

ORDER ALLOWING CERTIORARI—Filed March 3, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 947

ORDER ALLOWING CERTIORARI—Filed March 3, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.